Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in a civil diversity action in which the claims of one plaintiff meet the amount-in-controversy threshold, 28 U.S.C. § 1367 authorizes the district courts to exercise supplemental jurisdiction over the related claims of additional plaintiffs who do not satisfy the amount-in-controversy requirement?

PARTIES TO THE PROCEEDING

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INTRODUCTION

With its decision in this case, the First Circuit became the ninth court of appeals to weigh in on the question whether, in a diversity action in which at least one plaintiff satisfies the amount-in-controversy requirement of 28 U.S.C. § 1332, Pet. App. 66a-67a, the supplemental jurisdiction statute, 28 U.S.C. § 1367, permits the district courts to exercise jurisdiction over the related claims of additional plaintiffs who do not independently satisfy the amount-in-controversy requirement. To date, five circuits have held that the statute authorizes the assertion of such pendent-party jurisdiction in diversity cases, while four circuits, including the First Circuit in this case, have held to the contrary. This Court itself has once attempted to answer the question, *see Free v. Abbott Labs., Inc.*, 528 U.S. 1018 (1999), but with one justice recused, the Court divided 4-4 and affirmed the lower-court decision without a precedential opinion. *See* 529 U.S. 333 (2000). As this question presents important issues with wide-ranging consequences across the civil justice system, the Court should again grant certiorari and resolve it.

As the First Circuit noted, the question presented actually arises in two similar but distinct contexts, and the circuits have split on both versions of the issue. First, there are cases, like this one, involving the ordinary joinder of additional plaintiffs under Rule 20 of the Federal Rules of Civil Procedure. Pet. App. 68a. Second, there are cases involving the claims of absent class members in diversity-only class actions. Prior to the enactment of § 1367, the rule in both contexts was the same: in diversity cases, multiple plaintiffs with separate claims were each required to satisfy the jurisdictional amount. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (applying rule in multi-party non-class litigation raising federal question); *Zahn v. Int'l Paper Co.*, 414 U.S. 291 (1973) (extending *Clark* to Rule 23 class

actions). The question, put another way, is whether § 1367 abrogates those decisions.

OPINION AND JUDGMENT BELOW

The opinion of the court of appeals (Pet. App. 1a-45a) is reported at 370 F.3d 124. The opinion of the district court (Pet. App. 46a-64a) is reported at 213 F. Supp. 2d 84, and an order of the district court denying rehearing (Pet. App. 65a) is unreported.

JURISDICTION

The court of appeals entered judgment on June 2, 2004. Jurisdiction in this Court exists under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This case involves § 1367 of Title 28, United States Code, which provides in pertinent part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
>
> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or

seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

This case also involves § 1332 of Title 28, United States Code, and Rule 20 of the Federal Rules of Civil Procedure, which are reproduced in Petitioners' Appendix at pages 66a-67a and 68a, respectively.

STATEMENT OF THE CASE

This is a diversity action involving personal injury claims brought by Beatriz Blanco-Ortega, a citizen of Puerto Rico,[1] and three of her family members, also citizens of Puerto Rico, against Star-Kist Foods, Inc., a company then

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[1] "The word 'States', as used in [the diversity-of-citizenship statute, 28 U.S.C. § 1332], includes . . . the Commonwealth of Puerto Rico." 28 U.S.C. § 1332(d).

incorporated, and having its principal place of business, in Pennsylvania.[2]

The case arises out of injuries suffered in 1999 when Beatriz, then nine years old, cut her pinky finger on a defective can of Star-Kist tuna while eating lunch at school. Beatriz's injuries ultimately led to surgery on her hand, the prospect of future surgery, and minor permanent disability and scarring.

In the amended complaint on which the case has gone forward, Beatriz, along with her mother, Maria del Rosario-Ortega, her father, Sergio Blanco, and her sister, Patrizia Blanco-Ortega, sued Star-Kist and its unnamed insurers. Beatriz alleged that she had suffered physical and emotional damages of not less than $900,000. In addition, each of Beatriz's family members sought emotional damages in excess of $75,000, with Ms. Ortega seeking an additional $30,000 in damages for past and future medical expenses.

Star-Kist moved for summary judgment on the ground that none of the plaintiffs had satisfied the $75,000 amount-in-controversy requirement needed to establish federal-court jurisdiction pursuant to § 1332. Applying the "legal certainty" test set forth by this Court in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938), and surveying recoveries in similar cases, the district court concluded that it was a legal certainty that none of the plaintiffs could prove damages in excess of $75,000. Accordingly, the district court dismissed the case for lack of subject-matter jurisdiction.

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[2] Since the court below found the claims of Beatriz to be within the jurisdiction created by 28 U.S.C. § 1332, the petitioners in this Court are her three family members who were co-plaintiffs in the district court — Maria del Rosario-Ortega, Sergio Blanco, and Patrizia Blanco-Ortega.

The plaintiffs appealed, and the First Circuit (Lynch, J.) affirmed in part and reversed in part. The court first unanimously reversed the district court on the question whether Beatriz had satisfied the amount-in-controversy requirement. The court concluded that, in light of Beatriz's permanent physical impairment and claimed pain and suffering, it could not say to a legal certainty that Beatriz could not recover a jury award larger than $75,000, and that Beatriz's claim should therefore be allowed to go forward. By contrast, the court concluded that it was a legal certainty that the emotional distress claims of Beatriz's family members (even taking into account Ms. Ortega's additional claim for medical expenses) did not meet the $75,000 threshold. Pet. App. 3a-10a.

Next, speaking on behalf of two judges, the court considered whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, nevertheless permitted the district court to assert jurisdiction over the claims of Beatriz's family members. It noted that the proper resolution of this issue "is far from clear," and has deeply divided the circuit courts. It observed further that this issue has arisen in two contexts — cases, such as this one, involving the ordinary permissive joinder of multiple plaintiffs under Rule 20 of the Federal Rules of Civil Procedure, and cases involving the claims of absent class members in diversity-only class actions. Pet. App. 11a.

Confining its consideration to the first of these contexts, the court below began its analysis by reviewing the law as it existed before the enactment of § 1367 in 1990. It noted that the previously settled rule, commonly associated with *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), required that each plaintiff in a diversity action must separately satisfy the jurisdictional-amount requirement. The court noted further that the "impetus for Congress's adoption of § 1367 was the Supreme Court's 5-4 decision in *Finley v. United States*, 490 U.S. 545 (1989)," in which this Court had held that the

district courts lack jurisdiction over pendent-party state-law claims in federal-question cases. Pet. App. 14a. But while primarily aimed at overturning *Finley*, the court below observed, § 1367's text "can be read to do more than" that — indeed, on its face, § 1367 appears to be "a jurisdictional grant of such apparent breadth" as to have "created confusion in a number of areas in which principles were thought to be well established." Pet. App. 15a (quoting 13B Charles Alan Wright et al., *Federal Practice and Procedure* § 3567.2 (2d ed. 2003)).

The court stated that one such area of resulting confusion involves the continued validity of the Supreme Court's holdings that every plaintiff in a diversity case must meet the jurisdictional-amount requirement. Under one line of reasoning, adopted by the Seventh Circuit in *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928 (7th Cir. 1996), § 1367 has been found to overturn the jurisdictional amount holding of *Clark* in diversity cases because Congress failed in § 1367(b) "to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332." Pet. App. 15a. Under a second line of reasoning, which the court below ultimately adopted, *Clark* has been found to be preserved by "the requirement in § 1367(a) that the district court must first have 'original jurisdiction' over an action before supplemental jurisdiction can apply, . . . and thus [§ 1367] does not supply supplemental jurisdiction where, as in this case, only one of the named plaintiffs meets the amount in controversy." Pet. App. 16a (citing James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631 (10th Cir. 1998); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999)).

Applying this latter analysis to the facts of this case, the court reasoned that, because the district court lacked

jurisdiction over the claims of Beatriz's family members under the jurisdictional principles articulated in *Clark*, it lacked "original jurisdiction" over the entire action, and the statutory prerequisite for the exercise of supplemental jurisdiction was therefore not met.[3] While this interpretation of § 1367(a) obviated the need for the court to address the exceptions set forth in § 1367(b), the court noted that its interpretation provided an explanation for the omission of Rule 20 plaintiffs from those exceptions.

In support of its interpretation of the statutory language, the court opined that a contrary reading of the statute would necessarily permit the permissive joinder of non-diverse plaintiffs, thereby abrogating the complete-diversity rule of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), a "surprising and far-reaching consequence[]" that the court did not believe Congress intended. Finally, the court concluded that the legislative history of § 1367 supported the court's conclusion that Congress did not believe that the statute would make significant changes to the law of diversity jurisdiction.

Judge Torruella dissented from the portion of the court's ruling addressing supplemental jurisdiction, on the ground that it "is contrary to the plain language of § 1367." Pet. App. 33a. He began his analysis by noting that, while only two prior circuit courts had split on the question at hand in the Rule 20 joinder context, when class action cases are

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[3] The court noted that this reading of the "original jurisdiction" requirement in § 1367 is supported by "the settled meaning of identical language in 28 U.S.C. § 1441, the removal statute." Pet. App. 21a. There, the court asserted, the prerequisite to removal — that the action to be removed be one "of which the district courts . . . have original jurisdiction" — has been interpreted "to prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a; *see infra* note 15.

considered, a total of five circuit courts had interpreted § 1367 to allow a plaintiff who does not independently meet the amount-in-controversy requirement to remain in federal court, while three other circuit courts had reached the opposite conclusion. Stating that "*Clark* and *Zahn* stand for the same principle," Judge Torruella suggested that the majority should have addressed the reasoning of the majority of class-action cases that came out the other way. He also asserted that if any distinction were to be drawn between the two situations with regard to the amount-in-controversy requirement, the Rule 20 joinder situation is the stronger one for allowing supplemental jurisdiction over additional plaintiffs who do not meet the jurisdictional amount requirement. Pet. App. 35a-36a.

Turning to the text of the statute, Judge Torruella explained that the district court had "original jurisdiction" over Beatriz's claim within the meaning of § 1367(a) because she and Star-Kist are diverse and her claim exceeds $75,000. Therefore, the district court also had supplemental jurisdiction over the related claims of Beatriz's family members unless one of the exceptions of § 1367(b) applied. While § 1367(b) excepts claims asserted by plaintiffs made parties pursuant to Rules 19 and 24 of the Federal Rules of Civil Procedure and *against* persons made parties pursuant to, *inter alia*, Rule 20, the claims in this case were being asserted by persons made parties pursuant to Rule 20 and, accordingly, none of the exceptions applied. Judge Torruella criticized the majority's alternative approach for misinterpreting the concept of original jurisdiction, making other provisions of § 1367 superfluous, and improperly relying on "internally contradictory" legislative history. Pet. App. 39a-45a.

REASONS FOR GRANTING THE WRIT

This case presents in the stark context of Rule 20 joinder the conundrum that this Court sought to resolve four years

ago in the class action context, *Free v. Abbott Labs., Inc.*, 529 U.S. 333 (2000) (affirming by equally divided Court): whether Congress's statutory grant of supplemental jurisdiction in 28 U.S.C. § 1367 extends in diversity actions to the claims of additional plaintiffs who fail to meet the amount-in-controversy requirement of 28 U.S.C. § 1332. This issue, in both of its factual contexts, has fomented clear splits among the federal courts of appeals, and has generated a remarkable and diverse body of commentary.

The issue at hand is a fundamental and frequently recurring one, with profound consequences to broaden or constrict the diversity jurisdiction of the federal courts. Ultimately at issue is the question whether federal courts sitting in diversity jurisdiction are to be a viable forum for the resolution of a very large category of disputes. For, in both the Rule 20 and class-action contexts, where some potential plaintiffs but not others can satisfy the amount-in-controversy requirement, the rule adopted by the court below would often render the federal forum non-viable by the resulting inability to resolve the entire dispute in a single proceeding.

The statutory construction issues presented by § 1367 in this Rule 20 joinder case are similar but not identical to those that arise in the class-action context. The language of § 1367 leads quite directly and unavoidably to the conclusion that diverse plaintiffs who lack the amount-in-controversy may be joined under Rule 20 pursuant to the supplemental jurisdiction. The textual analysis with regard to class-action plaintiffs under Rule 23 is similar, but somewhat less compelling in certain respects. There are also differences in the relevant legislative history. And it is at least conceivable that the Court might reach different conclusions applicable to the Rule 20 and class-action contexts. Thus the Court's consideration of the statute's proper construction would likely be enhanced by careful consideration of its application in both contexts.

Accordingly, petitioners submit that this case merits plenary review by this Court, either alone or in conjunction with a case presenting the parallel issue in the class action context.[4]

I. THE FEDERAL CIRCUITS ARE DEEPLY SPLIT ON THE APPLICATION OF § 1367 SUPPLEMENTAL JURISDICTION TO PLAINTIFFS IN A DIVERSITY ACTION WHO LACK THE AMOUNT-IN-CONTROVERSY

For the past fourteen years, the federal courts have wrestled with the problem of construing § 1367's grant of supplemental jurisdiction, and specifically with whether that 1990 statute altered the pre-existing law as announced in decisions of this Court requiring each plaintiff in a diversity case individually to satisfy the amount-in-controversy requirement of 28 U.S.C. § 1332. *See, e.g.*, *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973); *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (amount-in-controversy requirement in multi-party federal question context).

This issue has arisen in two contexts, and the decisions of the circuit courts are sharply split in both. First, three circuits have addressed whether the district courts' supplemental jurisdiction extends to the claims of additional plaintiffs permissively joined pursuant to Rule 20 of the

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[4] Presently pending before the Court is a petition for certiorari by Exxon, from the decision of the Eleventh Circuit in *Allapattah Services, Inc. v. Exxon Corp.*, 333 F.3d 1248 (11th Cir. 2003), *reh'g denied*, 362 F.3d 739 (11th Cir. 2004) (petition for certiorari filed July 14, 2004). In that case, the Eleventh Circuit held that § 1367 authorizes the exercise of jurisdiction over unnamed class plaintiffs who do not meet the amount-in-controversy requirement. Given the important differences between the statutory analysis required in the Rule 20 and class action contexts, petitioners urge the Court to grant certiorari in this case, whether or not it also decides to grant review in *Allapattah*. *See infra* Part III.

Federal Rules of Civil Procedure, asking, in effect, whether § 1367 overrules *Clark v. Paul Gray, Inc.* The First and Third Circuits have concluded that § 1367 does not authorize supplemental jurisdiction under such circumstances and that *Clark* therefore remains good law. *See* Pet. App. 20a-24a; *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999). The Seventh Circuit, by contrast, has concluded that § 1367 abrogates the rule of *Clark* and permits the exercise of supplemental jurisdiction over the claims of permissively joined plaintiffs who do not meet the amount-in-controversy requirement. *See Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir. 1996).

Second, eight circuits have addressed the same issue in the Rule 23 class-action context. In this context, the Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits have held that the statute abrogates *Zahn* and authorizes the district courts in diversity actions to exercise supplemental jurisdiction over the claims of class members who do not meet the amount-in-controversy requirement, provided that the named plaintiff does so. *See Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1254 (11th Cir. 2003); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 934 (9th Cir. 2001); *Rosmer v. Pfizer Inc.*, 263 F.3d 110, 114 (4th Cir. 2001); *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 607 (7th Cir. 1997); *In re Abbott Labs.*, 51 F.3d 524, 528-29 (5th Cir. 1995). The Third, Eighth, and Tenth Circuits, by contrast, have concluded that § 1367 does not authorize the exercise of supplemental jurisdiction under such circumstances. *See Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998).

The academic commentators have given great attention to the issue of § 1367's proper construction, and they too are irreconcilably divided. Several of them urge the

interpretation advocated by petitioners.[5] Others acknowledge that the text of § 1367 is best read as petitioners urge, but nonetheless argue for an exceptional and less textually-grounded construction of the statute.[6] And one commentator, Professor Pfander, has divined a textually-based construction of the statute that yields the result reached by the court below.[7] All of the leading procedure treatises likewise acknowledge the debate — some taking sides;[8]

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[5] *See, e.g.*, Jeffrey L. Rensberger, *The Amount in Controversy: Understanding the Rules of Aggregation*, 26 Ariz. St. L.J. 925, 931-32 (1994) (§ 1367 abrogates previous jurisdictional requirements in multi-plaintiff diversity actions); Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 60 (2004) (same); Michael B. Slade, Note, *Democracy in the Details: A Plea for Substance Over Form in Statutory Interpretation*, 37 Harv. J. on Legis. 187, 210 (2000) (same); Joel E. Tasca, Comment, *Judicial Interpretation of the Effect of the Supplemental Jurisdiction Statute on the Complete Amount in Controversy Rule: A Case for Plain Meaning Statutory Construction*, 46 Emory L.J. 435, 436–39 (1997) (same); Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases*, 74 Ind. L.J. 5, 5–6 (1998) (same)

[6] *See, e.g.*, Laura L. Hirshfeld, *The $50,000 Question: Does Supplemental Jurisdiction Extend to Claims Between Diverse Parties Which Do Not Meet § 1332's Amount-in-Controversy Requirement?*, 68 Temp. L. Rev. 107, 110–11 (1995) (§ 1367 does not abrogate amount-in-controversy requirement in multi-plaintiff diversity cases); Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 192 (1994) (same); *and* Thomas D. Rowe, Jr. et al., *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 961 n.91 (1991) (same).

[7] James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 148 (1999); James E. Pfander, *The Simmering Debate Over Supplemental Jurisdiction*, 2002 U. Ill. L. Rev. 1209, 1231 (2002).

[8] *See, e.g.*, 16 James Wm. Moore *et al.*, *Moore's Federal Practice* ¶ 106.44 (3d ed.); 13 Charles Alan Wright *et al.*, *Federal Practice and*

others abstaining from the debate;[9] and still others being internally inconsistent on the issue.[10] The issue has been fully joined and ventilated, and it is ready for this Court's review.

II. THE QUESTION PRESENTED IS AN ISSUE OF SUBSTANTIAL RECURRING IMPORTANCE

It is hardly surprising that a total of nine courts of appeals (splitting 5-4) have addressed the question whether § 1367 extends supplemental jurisdiction in diversity actions to plaintiffs who do not satisfy the amount-in-controversy requirement. For that issue defines a critical boundary of the jurisdiction of the federal courts, which has broad practical consequences for the nature of the disputes that will be resolved there.

Under the decision below, federal courts are empowered to resolve controversies between diverse parties under state law, but only as to claimants asserting injury of at least $75,000. Other plaintiffs (whether diverse or not) with claims against the same defendant arising from the same

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Procedure § 3523.1, at 181 (Supp. 2004); Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* at 40, 217 & n.33 (6th ed. 2002).

[9] *See, e.g.*, Richard H. Fallon *et al.*, *Hart & Wechsler's The Federal Courts and the Federal System* 926–930, 1490–1493 (5th ed. 2003) (leaving open the question).

[10] *Compare* James Wm. Moore, *Moore's Federal Practice: Judicial Code Title 28 U.S.C.*, ¶ 1367.2[1] at 478 (Supp. 2004) (noting that § 1367(b) "precludes supplemental jurisdiction over claims asserted by plaintiffs if assertion of the claim would be inconsistent with the jurisdictional requirements of the statute, i.e., if the parties to the claim are not diverse, or the jurisdictional minimum is not present") *with id.* at 479 (noting the contradiction compelled by § 1367(b)'s language that appears to authorize supplemental jurisdiction when a joined plaintiff is a proper plaintiff under Rule 20 but not when the joined plaintiff is a necessary party under Rule 19).

transaction or occurrence, but falling below that amount, must pursue relief elsewhere. If the goal of § 1367 is to steer potential diversity cases away from federal court and back to the states — including major class action cases, which many believe most naturally belong in federal court — then the decision of the court below advances that goal by regularly preventing the federal court from dealing with the controversy at hand in its entirety. By contrast, if the goal of the statute is to provide an efficient federal forum for the resolution of the related claims of multiple plaintiffs, then the decision below frustrates this goal by preventing the federal courts from resolving all of the claims that may arise out of the same transaction or occurrence.

Given what is at stake, it is thus not surprising that the issue has been frequently litigated. The fact that the lower courts have been unable to resolve it, but rather have sharply split over the correct interpretation of § 1367, is a practical problem beyond the merits of the underlying question. The confusion generated by this issue has led to an uncommon number of collateral disputes over where, not how, a matter ought to be decided.

This lasting uncertainty regarding the impact of a single statute has prompted a regrettable expenditure of judicial and private resources. Litigation devoted solely to which court system has authority over a matter, as this Court has recognized, is far from desirable or efficient; in point of fact, "litigation over whether the case is in the right court is essentially a waste of time and resources." *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464 n.13 (1980); *see also Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 549 (1995) (Thomas, J., concurring in the judgment) (noting that a "clear, bright-line" jurisdictional rule "ensures that judges and litigants will not waste their resources in determining the extent of federal subject-matter jurisdiction"). Plaintiffs and defendants alike, to say nothing of district court judges, will benefit from a definitive

resolution of the issue and what comes with it — a clear allocation of judicial responsibility between state and federal courts.

III. THE QUESTION AS PRESENTED IN THE RULE 20 JOINDER CONTEXT IS SUFFICIENTLY DISTINCT AS TO MERIT SEPARATE PLENARY CONSIDERATION, PRIOR TO RESOLUTION OF THE ISSUE IN THE CLASS ACTION CONTEXT

Perhaps due to the increasing popularity of the class action device, the question whether § 1367 authorizes the exercise of pendent-party jurisdiction in diversity actions over the claims of additional plaintiffs who do not independently meet the amount-in-controversy requirement has received more judicial and academic attention in the class-action context. Yet there are compelling reasons for the Court to fully consider the question as it arises in the context of multi-party non-class litigation before it resolves the issue in the class-action context.[11]

As an analytical matter, resolution of the issue in the Rule 20 joinder context lends clarity to the analysis in the class-action analysis, which adds additional complexities not present in this case. *See, e.g., U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 787 (1995) ("Our resolution of these issues draws upon our prior resolution of a related but distinct issue . . . ."). While the issue is, in many respects, similar in both contexts, the Rule 23 context raises additional issues unique to class actions.

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[11] As noted above, another pending petition, *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-____ (filed July 14, 2004), raises the related question whether § 1367 authorizes supplemental jurisdiction over the claims of Rule 23 plaintiff class members who fail to satisfy the amount-in-controversy requirement.

As pointed out in the petition for certiorari filed July 14, 2004 in *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-____, at 15-16, one such issue arises at the very threshold, in determining whether there is a "civil action of which the district courts have original jurisdiction." In the Rule 20 context, when one plaintiff brings claims meeting the jurisdictional amount against diverse defendants, jurisdiction over that dispute exists under § 1332. It is entirely clear that the joinder of additional diverse plaintiffs with similar claims lacking the jurisdictional amount, and thus not within the court's § 1332 jurisdiction, does not destroy diversity jurisdiction over the first plaintiff's claims. *See infra* note 14.[12] Exxon argues that it is significant that "a class action is a representative suit," and further contends that a "federal court does not have original jurisdiction over a class or representative action in which unnamed class members do not satisfy the amount in controversy requirement." Exxon Pet. at 16.

Further, in the class action context, the Court will be confronted with the question whether the separate claims of different plaintiffs stemming from different incidents and aggregated for purposes of Rule 23 constitute "part of the same case or controversy under Article III," which is a prerequisite to the triggering of supplemental jurisdiction under § 1367(a). By contrast, Rule 20 joinder, by definition, applies only with respect to claims "arising out of the same transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20(a).

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[12] It appears, in contrast, that the addition of non-diverse plaintiffs, which is not at issue in this case, does leave the court without jurisdiction under § 1332, although that fact apparently does not foreclose a court from proceeding with the case by dismissing the non-diverse parties. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 831 (1989).

Also, § 1367(b) expressly addresses its application in the context of Rule 20 (excepting only application to Rule 20 defendants, but not plaintiffs, 28 U.S.C. § 1367(b)), but not in the context of Rule 23. Therefore, construction of the statute as it applies in the class-action context requires a textual analysis in the absence of the express statutory guidance available in the Rule 20 context. *See, e.g.*, *Jacobson v. Ford Motor Co.*, No. 98 C 742, 1999 U.S. Dist. LEXIS 16213, at *32 (N.D. Ill. Sept. 30, 1999) (noting textual distinction between Rules 20 and 23 in the statute); *cf. Allapattah*, 333 F.3d at 1255 ("Notably, Federal Rule of Civil Procedure 23, which pertains to class actions, is not one of the enumerated exceptions" in § 1367(b).).

Moreover, to the extent that the legislative history of § 1367 were to enter the statutory analysis, it would affect differently the statute's application in the Rule 20 and class-action contexts. For example, proponents of the view that all plaintiffs must meet the jurisdictional-amount requirement can point to language from the House Report stating that § 1367 "is not intended to affect the jurisdictional requirements of 28 U.S.C. §1332 in diversity-only class actions." H. Rep. No. 101-734, at 29 (Sept. 21, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6875. *See Allapattah Servs., Inc.*, 362 F.3d at 774 (Tjoflat, J., dissenting from denial of rehearing en banc). No parallel language can be found directly addressing Rule 20 joinder in the same way.

Whatever one's preliminary answer to the question whether a holding in one of these two contexts necessarily compels the same result in the other context,[13] the differences

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[13] The courts have differed on the answer to this question. *Compare* Pet. App. at 32a n.19 (holding that § 1367 preserves the rule of *Clark* but stating that "the application of § 1367 to diversity-only class actions is a different problem for several reasons"), *with Meritcare*, 166 F.3d at 218 (concluding that § 1367 preserves both *Clark* and *Zahn* and that the *Zahn*

set forth above are reason enough for the Court to consider the issues separately, and to resolve the statute's application in the Rule 20 context before undertaking to apply it in class action cases. The textual argument for allowing supplemental Rule 20 plaintiffs who do not satisfy the amount-in-controversy requirement is simpler and more compelling. Also, as Judge Easterbrook has noted, because allowing joined Rule 20 plaintiffs into federal court involves a far more modest expansion of jurisdiction, it would be "easy to imagine [the Congress] wanting to overturn *Clark* but not *Zahn*; it is much harder to imagine wanting to overturn *Zahn* but not *Clark*, and we have no reason to believe that Congress harbored such a secret desire." *Stromberg*, 77 F.3d at 931. Deciding the Rule 20 issue first would thus allow an incremental approach to the statute, clarifying its reach in a more modest context before considering more aggressive applications.

This is precisely what the Court did in considering the analogous issues under the regime that existed prior to the enactment of § 1367. Following the enactment of the Federal Rules of Civil Procedure, the Court first resolved the jurisdictional requirements in multi-plaintiff cases in the non-class context. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939). When the Court addressed the issue in the class context, it did so expressly by reference to the general rule set out in *Clark*, and asked whether the special context of the class action compelled any different result. *See Zahn*, 414 U.S. at 292 (noting that the class issue "is governed by the rationale of this Court's prior cases" in the non-class

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line of cases "applies equally to joinder cases and class actions"); *Stromberg*, 77 F.3d at 931 ("Section 1367(a) has changed the basic rule by authorizing pendent-party jurisdiction, and that change affects *Clark* and *Zahn* equally."); *and* Pet. App. at 35a (Torruella, J., dissenting) ("[F]or § 1367 purposes, *Clark* and *Zahn* stand for the same principle.").

context); *id.* at 302 (relying upon "the accepted approach to cases involving ordinary joinder of plaintiffs with separate and distinct claims"). The same order of decision is appropriate with respect to the same issues under the new regime implemented by § 1367.

IV. THE DECISION OF THE COURT BELOW CANNOT BE RECONCILED WITH THE LANGUAGE OF § 1367

Interpretation of an act of Congress begins, of course, with the language of the statute itself. *Lamie v. United States Trustee,* 124 S. Ct. 1023, 1030 (2004). As a general rule, one "must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253-54 (1992).

In the context of multiple plaintiffs joined in a case pursuant to Rule 20, some of whom lack the required amount-in-controversy, the application of § 1367 is straightforward. Section 1367(a) describes both the triggering event for the exercise of supplemental jurisdiction and the nature of the claims and parties to which that jurisdiction extends. Section 1367(b) sets forth specific exceptions to the exercise of that jurisdiction, which are applicable in diversity cases brought under § 1332.

The triggering event for the exercise of supplemental jurisdiction is the existence of "any civil action of which the district courts have original jurisdiction." The lawsuit filed here in the District of Puerto Rico was such a case. The complaint as filed satisfied the requirements of complete diversity and, as held by the court below, satisfies the amount-in-controversy requirement as to the injured child, Beatriz. No one has ever argued — nor could they — that there was a basis for dismissal of the entire action on the

ground that the other plaintiffs named in the complaint failed to satisfy that requirement.[14] The district court clearly had jurisdiction over Beatriz's claims, and only the claims of the co-defendants were subject to dismissal under § 1332. Thus, it necessarily follows that the original suit embodying the claims of Beatriz was a "civil action of which the district court[] ha[d] original jurisdiction."

That much being clear, § 1367(a) expressly extends to the district court further "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." The statute further makes explicit that this supplemental jurisdiction is not limited to additional claims by the original parties, but "shall include claims that involve the joinder or intervention of additional parties."

Here, all of the claims alleged by all of the parties plainly are part of the same "case or controversy." That is, they arise from the injury to Beatriz involving the tuna can — a single "transaction" or "occurrence," one and the same "nucleus of operative fact." *See, e.g., City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164-65 (1997). Accordingly, the affirmative requirements of § 1367(a) exist for the exercise of supplemental jurisdiction.

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[14] Where some plaintiffs but not others meet the jurisdictional minimum in diversity cases, courts routinely dismiss the claims only of the affected plaintiffs and retain jurisdiction over the valid claims of the remaining plaintiffs. *See, e.g., Hymer v. Chai*, 407 F.2d 136, 137-39 (9th Cir. 1969); *United Pac./Reliance Ins. Cos. v. City of Lewiston*, 372 F. Supp. 700, 704-05 (D. Idaho 1974); *Robison v. Castello*, 331 F. Supp. 667, 669-70 (E.D. La. 1971); *Ciaramitaro v. Woods*, 324 F. Supp. 1388, 1390 (E.D. Mich. 1971); *Rompe v. Yablon*, 277 F. Supp. 662, 665 (S.D.N.Y. 1967). Indeed, that is precisely what the First Circuit did in this case. Pet. App. 33a.

This is true notwithstanding the argument originally articulated by Professor Pfander, 148 U. Pa. L. Rev. 109, 134-137, and adopted by the majority below, that the statute should be given a "sympathetic reading" that preserves this Court's pre-existing decisions in *Clark* and *Zahn* — and thus bars claims of co-plaintiffs who lack the amount-in-controversy. To achieve that result, Pfander's reading construes the "original jurisdiction" requirement triggering supplemental jurisdiction as satisfied only when the district court has § 1332 jurisdiction over the entire action as filed. By that standard, the present action is not one "of which the district courts have original jurisdiction" — even though there was indisputable jurisdiction to resolve Beatriz's claims — because § 1332 did not give the court power to resolve the claims of the other plaintiffs.

This interpretation is fatally flawed, most obviously, because it denies the existence of "original jurisdiction" where such jurisdiction plainly exists.[15] Beyond that, it

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[15] The court below drew support for its conclusion from the fact that 28 U.S.C. § 1441, the general removal statute, which allows removal only if the "civil action" in question is one "of which the district courts . . . have original jurisdiction," § 1441(a), has been construed to "prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a-22a. The court noted that "[b]y the time Congress enacted section 1367 in 1990, this interpretation of section 1441(a) was well-settled," and thus concluded that "Congress purposefully employed language in section 1367(a) that had already been interpreted in section 1441 to incorporate the traditional doctrines of federal jurisdiction — including . . . *Clark*." Pet. App. 22a.

This reasoning is seriously flawed on several grounds. First, this Court has directly addressed the interaction of § 1441 and § 1367, and has rejected the sort of claim-specific interpretation of the removal statute assumed by the court below. When the district courts would have had original jurisdiction over some claim in the case, the entire action is removable under § 1441 so long as the accompanying claims over which

there is no original federal jurisdiction fall within the requirements for supplemental jurisdiction under § 1367. *City of Chicago*, 522 U.S. at 165. Requiring "that we first determine whether [a plaintiff's] state claims constitute 'civil actions' within a district court's 'original jurisdiction'" would "effectively read the supplemental jurisdiction statute out of the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.* at 167.

Second, the court's conclusion that "section 1367's 'original jurisdiction' requirement [should be] consistent with the settled meaning of identical language in 28 U.S.C. 1441," Pet. App. 21a, makes little sense. The question at hand is not about the meaning of the words "original jurisdiction," but about the scope of the "civil action" referred to in each instance. And in the removal context, where the plaintiff is the master of his own complaint, *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987), one would expect that a defendant who wishes to remove a case to federal court would be required to take the case as plaintiff has pled it. Where the complaint as drafted is not within the jurisdiction of the federal court, no principle or doctrine exists that will force the plaintiff to modify it in order to confer such jurisdiction. Nor may the defendant unilaterally sever parties or claims, included by the plaintiff, in order to achieve that result. The reference to a "civil action" in § 1441 thus refers quite naturally to the complaint as drafted by the plaintiff.

No parallel justification exists in the context of § 1367 for construing the words "any civil action of which the district courts have original jurisdiction" to incorporate the same condition that jurisdiction must exist for the entire action as framed by the plaintiff. To the contrary, the facial purpose of the supplemental jurisdiction statute is to confer jurisdiction over claims and parties that are beyond the court's jurisdictional reach based solely on §§ 1331 and 1332. The natural reading of the words here leads to the conclusion that when there is a civil action — *"any civil action"* — over which the federal district court has original jurisdiction, the predicate for the exercise of supplemental jurisdiction (subject to the other limitations and qualifications of § 1367 (a), (b), and (c)) is present.

Further, § 1367(b), by expressly denying supplemental jurisdiction for the purpose of joining under Rule 20 *defendants* who could not otherwise be joined under § 1332, appears to contemplate that such jurisdiction is

ignores the fact that the whole point of § 1367 is to confer upon the federal court additional jurisdiction, beyond what is possible under either § 1331 or § 1332. If the essential predicate for the exercise of supplemental jurisdiction were really the existence of § 1331 or § 1332 jurisdiction over every aspect of a plaintiff's complaint, then the supplemental jurisdiction would have no effect at all on the claims or parties who may be named in the original complaint. Such a result is sharply at odds with Congress's undisputed desire to abrograte this Court's holding in *Finley*, as well as with § 1367(a)'s express provision extending supplemental jurisdiction to additional claims and additional parties, to the extent that the claims involved are part of the same "case or controversy" as the claims already within the jurisdiction of the court.

If one thus concludes that the affirmative requirements of § 1367(a) are met, one must further consider the provisions of § 1367(b), which expressly qualify and limit the grant of supplemental jurisdiction in diversity cases. In drafting § 1367(b), Congress obviously had in mind, and expressly imposed, certain limitations — but not others — on the use of supplemental jurisdiction to extend federal judicial power beyond the traditional limits of the diversity jurisdiction. It did this by expressly providing that any joinder of specified parties and/or claims, pursuant to particular rules of procedure, is permissible only if consistent with the requirements of § 1332.

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available to join *plaintiffs*, if the remaining requirements of § 1367 are met. These provisions regarding Rule 20 joinder cannot be reconciled with the so-called "sympathetic reading" of § 1367, under which § 1332 jurisdiction over the entire complaint is an essential prerequisite to any exercise of supplemental jurisdiction. Under that reading, supplemental jurisdiction to support Rule 20 joinder of additional plaintiffs exists only in those cases where it is not needed because § 1332 jurisdiction already exists.

Specifically, the statute states that the requirements of § 1332 must be met with regard to "claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24" of the Federal Rules, and "claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules."

Thus, plaintiffs in a diversity suit are expressly required to satisfy the requirements of § 1332 with regard to any claims against defendants whose joinder is to be justified under Rule 20 — which allows joinder of multiple parties in connection with claims "arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a). Section 1367 thus will not allow a plaintiff to join multiple defendants as to whom plaintiff does not meet the amount-in-controversy requirement.

At the same time, § 1367(b) creates no parallel exception for multiple plaintiffs who voluntarily join in one complaint as allowed by Rule 20. The only reasonable conclusion is that § 1367 authorizes supplemental jurisdiction over multiple plaintiffs who join in one complaint under Rule 20 but do not all meet the amount-in-controversy requirement of § 1332, but no such jurisdiction over multiple defendants who plaintiff seeks to bring into federal court although the amount-in-controversy is lacking.[16]

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[16] Such a jurisdictional scheme is perfectly sensible. Congress could well have sought to reserve supplemental jurisdiction in the diversity context as a tool by which willing plaintiffs with § 1332 jurisdiction against certain defendants can join together with other plaintiffs in one complaint to assert claims against those defendants arising from the same case or controversy, even though some plaintiffs lack the amount-in-controversy. Allowing such voluntary joinder of co-plaintiffs to pursue factually-related claims against defendants already in federal court

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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pursuant to § 1332, is quite different than asserting federal court jurisdiction over new defendants or adding new plaintiffs not voluntarily joined by the existing plaintiffs, all in connection with only state law claims and in the absence of § 1332 jurisdiction. Section 1367(b) thus, in part, prevents the forced inclusion in diversity actions of defendants as to whom the requirements of § 1332 are not satisfied, or of similarly situated plaintiffs who the original plaintiffs are unwilling to join with under Rule 20.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Maria Del ROSARIO ORTEGA; Sergio Blanco, by themselves and representing minors Beatriz Blanco-Ortega and Patrizia Blanco-Ortega, Plaintiffs, Appellants,

v.

STAR-KIST FOODS, INC., Defendant, Appellee.

No. 02-2530.

Heard Nov. 5, 2003.
Decided June 2, 2004.

Before BOUDIN, Chief Judge, TORRUELLA and LYNCH, Circuit Judges.

LYNCH, Circuit Judge.

In April 1999, Beatriz Blanco-Ortega, then nine years old, cut her right pinky finger on a can of Star-Kist tuna. That is not normally the stuff of lawsuits in federal court, but her injuries were more than trivial and led to surgery, the prospect of future surgery, and minor permanent disability and scarring. Beatriz, along with her parents and sister, sued in federal court, asserting diversity jurisdiction. 28 U.S.C. § 1332. The claims of Beatriz's family members were composed of emotional distress damages, with the mother asserting medical expenses as well. Plaintiffs' choice of federal court was no doubt influenced by the fact that civil jury trials are unavailable in the local courts of Puerto Rico.

The case raises two issues. First is the classic question whether each of the plaintiffs meets the amount-in-controversy requirement for diversity jurisdiction. 28 U.S.C. § 1332(a). The district court, using an analytic approach that we have since rejected, *see Stewart v. Tupperware Corp.*, 356 F.3d 335, 339 (1st Cir. 2004), held that it was a legal certainty that none of the plaintiffs' claims was worth $75,000 and so dismissed the case for lack of jurisdiction. As to the injured child, Beatriz, we reverse and hold that it is

not a legal certainty that she could not recover an award over $75,000. But we uphold the district court's conclusion that none of Beatriz's family members satisfies the amount-in-controversy requirement.

The second question is whether Beatriz's family members may nonetheless remain as plaintiffs under the supplemental jurisdiction statute, 28 U.S.C. § 1367. This is a very difficult question, new to this court, on which the circuits have split. We hold that by limiting supplemental jurisdiction to "civil action[s] of which the district courts have original jurisdiction," § 1367(a), Congress preserved the traditional rule that each plaintiff in a diversity action must separately satisfy the amount-in-controversy requirement. Accordingly, we affirm the dismissal of Beatriz's family members' claims for lack of subject-matter jurisdiction.

I.

On April 17, 2000, Beatriz Blanco-Ortega, along with three family members, filed a diversity suit against Star-Kist Foods Inc., Star-Kist Caribe Inc., and their unnamed insurers in the district of Puerto Rico. Besides Beatriz, the plaintiffs consisted of her mother, Maria del Rosario-Ortega; her father, Sergio Blanco; and her sister, Patrizia Blanco-Ortega. The defendants promptly moved to dismiss the complaint for lack of jurisdiction, claiming that there was not complete diversity of citizenship because Star-Kist Caribe Inc., the branch of Star-Kist that does business in Puerto Rico, was a Puerto Rico citizen for purposes of the diversity statute. The district court agreed and dismissed the complaint without prejudice.

The plaintiffs re-filed their complaint on February 28, 2001, this time only naming Star-Kist Foods, Inc. and its unnamed insurers as defendants. The complaint alleged that Beatriz had suffered physical damages of not less than $500,000 and emotional damages of not less than $400,000. It also alleged that each of her three family members had suffered emotional damages in excess of $150,000 and that

Mrs. Ortega had also incurred $4,927.07 in past medical expenses and $25,000 in estimated future medical expenses.

On October 24, 2001, Star-Kist moved for summary judgment, alleging that none of the plaintiffs could satisfy the $75,000 amount-in-controversy requirement. The district court agreed and on July 18, 2002, once again dismissed all of the plaintiffs' claims without prejudice for want of jurisdiction. The four plaintiffs appeal that decision.

II.

A. Amount-in-Controversy Requirement

In 1938, the Supreme Court established the basic standard by which to evaluate a challenge that a plaintiff has not met the jurisdictional amount-in-controversy requirement:

> The rule governing dismissal for want of jurisdiction in cases brought in federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.

St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938) (internal citations omitted).

"Under *St. Paul*, a plaintiff's allegations of damages that meet the amount-in-controversy requirement suffices unless questioned by the opposing party or the court." *Spielman v. Genzyme Corp.*, 251 F.3d 1, 5 (1st Cir. 2001). Once a defendant questions jurisdiction by challenging the amount of damages alleged in the complaint, the burden shifts to the plaintiff to show that it is not a legal certainty that the claims do not involve the requisite amount.[1] *Id.* at 4; *Barrett v.*

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[1] At one point, the district court wrongly said that "once the defendant challenges the amount of damages alleged in the complaint, then the burden shifts to the plaintiffs to establish facts indicating that, to a legal certainty, the claims involve more than the jurisdictional minimum."

Lombardi, 239 F.3d 23, 30-31 (1st Cir. 2001). "A party may meet this burden by amending the pleadings or by submitting affidavits." *Dep't of Recreation & Sports v. World Boxing Ass'n*, 942 F.2d 84, 88 (1st Cir. 1991). When there are several plaintiffs, each must present claims that meet the jurisdictional amount.[2] *Clark v. Paul Gray Inc.*, 306 U.S. 583, 589 (1939). Once a district court dismisses for failure to meet the jurisdictional amount, the court of appeals reviews that judgment de novo. *Spielman*, 251 F.3d at 4.

The basic error committed by the district court was to evaluate the amount-in-controversy by reference to amounts that the Supreme Court of Puerto Rico has found reasonable in tort cases. As we noted in *Stewart*, the analogy is imperfect in multiple respects, most notably because Puerto Rico does not have jury trials in civil cases. 356 F.3d at 339. We thus conduct the amount-in-controversy inquiry de novo, looking to each plaintiff individually.

The plaintiffs presented the following evidence in response to Star-Kist's challenge to the amounts alleged in the complaint: the deposition testimony of each of the four plaintiffs, the medical report of Dr. Zegarra (Beatriz's treating physician), hospital records, receipts for the payment of Beatriz's treatment, pictures of Beatriz's hand after the surgery, and the testimony of both the school nurse and the school paramedic who initially treated Beatriz when she cut herself.

This is incorrect; the plaintiff need only show it is *not* a legal certainty that the claims will *not* result in a verdict for the amount in controversy. The double negative has substantive meaning. Ultimately, it appears the district court did use the correct standard regarding the plaintiffs' burden despite this error in laying out the law.

[2] We address the supplemental jurisdiction question below.

This evidence established that after Beatriz cut her pinky finger while opening a can of Star-Kist tuna, she went to the school infirmary. The nurse and a paramedic were able to stop the bleeding after fifteen to thirty minutes. The nurse said that the cut was deep and bled profusely. A school official called Mrs. Ortega at home to tell her about Beatriz's injury, and Mrs. Ortega went to the school to pick up Beatriz. Mrs. Ortega then took Beatriz to the emergency room of a nearby hospital, where a doctor indicated that Beatriz may have severed her tendons and nerves. Mrs. Ortega contacted Dr. Zegarra, a hand surgeon, by phone while she was at the hospital, and scheduled an immediate appointment. Together, Mrs. Ortega and Beatriz went immediately from the hospital to Dr. Zegarra's office.

Dr. Zegarra confirmed that Beatriz had in fact damaged her nerves and tendons and determined that she required surgery. He was unable to secure an operating room for that day, so the surgery was scheduled for April 22, the next day. The surgery, which required Beatriz to be put under general anesthesia, successfully repaired Beatriz's deep flexor tendon and digital nerve. After the surgery, Beatriz attended physical therapy, which was painful, three times a week for a three-month period. Beatriz continued the physical therapy for eight months in total and wore a cast throughout that entire period. The therapy impaired her ability to write and paint in school and forced her to drop out of a volleyball tournament. Her finger bears a small scar and is slightly bent. Despite the successful surgery, Beatriz has been diagnosed with a 3% partial permanent impairment of the functioning of her hand. The medical prognosis is that the injury could become worse as she grows and that she may need more surgery.

Given Beatriz's permanent physical impairment, the surgery, and the claimed pain and suffering (bearing in mind the potential impact of the injury and its aftermath on a young girl), we cannot say to a legal certainty that Beatriz could not recover a jury award larger than $75,000. *See*

Stewart, 356 F.3d at 340 (plaintiffs met jurisdictional minimum where evidence suggested that each had suffered permanent physical impairment, had endured non-trivial pain and suffering damages by having to spend honeymoon in a hospital, and might require future medical services); *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (plaintiff's allegations that, as a result of falling in defendant's store, she sustained injuries to her wrist, knee and back, resulting in permanent disability and disfigurement and causing pain and suffering and lost wages, were sufficient to meet jurisdictional amount-in-controversy requirement); *Rosenboro v. Kim*, 994 F.2d 13, 18-19 (D.C. Cir. 1993) ("[T]he presence of medical evidence showing that a plaintiff is suffering from a continuing or permanent physical impairment [is] an important indicator" in determining whether the plaintiff meets the amount-in-controversy requirement).

The other plaintiffs fare differently. Mrs. Ortega presented evidence that she paid $4,927.07 for past medical expenses and says that she anticipates paying $25,000 in future medical expenses. She also claims that her emotional distress damages totaled $250,000. We assume arguendo that Mrs. Ortega can claim the past medical expenses and some future medical expenses.[3] But there was no support at all for the $25,000 figure for future medical expenses that she alleged, and a lower figure appears to be in order, given that past expenses were less than $5,000. Even if she could claim all $25,000, there is still quite a gap between the medical expenses and $75,000.

We conclude that Mrs. Ortega cannot fill this entire gap with her emotional distress damages. *Cf. Jimenez Puig v.*

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[3] As for future medical expenses, Mrs. Ortega suggested in her deposition that any future surgery Beatriz might have on her finger would be elective.

Avis Rent-A-Car Sys., 574 F.2d 37, 40 (1st Cir. 1978) (amount-in-controversy requirement of $10,000 was not met in claim for short-lived embarrassment and anger resulting from a car-rental clerk's public destruction of credit card and announcement that plaintiff had failed to pay his bills). One of the normal responsibilities of parenthood is dealing with a child's cuts and scrapes, and here the injuries were relatively minor. Neither Beatriz nor her mother sought any counseling relating to the injury. Moreover, Mrs. Ortega did not personally witness Beatriz's accident or the immediate aftermath.

Mrs. Ortega tries to argue that she meets the jurisdictional amount by relying on remittitur cases. Certainly courts may resort to analogous cases involving remittitur in determining whether a plaintiff can meet the amount-in-controversy requirement in a diversity case. But the utility of remittitur cases will vary depending on at least three factors—the factual similarities between the cases, the difference in viewpoints between the start of a case and the end of a case, and both the jury award in the remittitur case and the amount to which it was reduced.

Remittitur of a jury award is ordered when the award is "grossly excessive, inordinate, shocking to the conscience of the court, or so high that it would be a denial of justice to permit it to stand." *Correa v. Hosp. San Francisco*, 69 F.3d 1184, 1197 (1st Cir. 1995). In such cases, the rule in this circuit is that the jury award should be remitted "to the maximum that would be upheld by the trial court as not excessive." *Jones & Jones v. Pineda & Pineda*, 22 F.3d 391, 398 (1st Cir. 1994). The plaintiff has a choice between accepting the remittitur amount or opting for a new trial. *See Liberty Mut. Ins. Co. v. Cont'l Cas. Co.*, 771 F.2d 579, 588 (1st Cir. 1985).

While remittitur determinations are based on what has been proved at trial, amount-in-controversy determinations are made at the outset of the case. *See generally* 14B Wright

& Miller, *Fed. Prac. & Proc.* § 3702 (2d ed. 2003). This different procedural lens complicates determining whether there is sufficient factual similarity between the remittitur case and the jurisdictional case. To be useful, the facts of injury and damages that were actually proved to the jury in the remittitur case must be similar to the facts, taken in the light most favorable to the plaintiff, that could be proved in the jurisdictional case.

Moreover, for an analogy to a remittitur case to be useful, the difference between the numbers involved in the remittitur case must be taken into account. These amounts are (1) the jury award that was deemed excessive in a remittitur case and (2) the amount to which that award was remitted. If, assuming the cases are otherwise similar, both numbers are above the jurisdictional minimum (*i.e.*, $75,000), then the remittitur case supports the conclusion that the amount-in-controversy requirement has been met. Similarly, if both the jury award and the amount to which it was remitted are less than $75,000, that supports the conclusion that the amount-in-controversy requirement cannot be met.

More problematic are remittitur cases hovering around the jurisdictional amount—*i.e.*, cases in which the jury award is above the jurisdictional amount but the amount to which the award was remitted is below the jurisdictional amount. In theory, the amount to which the award was remitted should be the maximum possible amount that was legally permissible, and thus should be the applicable basis of comparison. But theory is often a long way from reality. As we have noted before, "converting feelings such as pain and suffering and the loss of enjoyment of life into dollars is not an exact science." *Smith*, 177 F.3d at 33 n.5. One safety valve for the inherent difficulty in selecting a remittitur amount is that the plaintiff is given the choice of accepting the reduced amount or opting for a new trial. *See Liberty Mut. Ins. Co.*, 771 F.2d at 588. The difficulty in converting pain and suffering into a dollar amount makes each case very

fact-specific, thus decreasing the usefulness of a remittitur case hovering around the jurisdictional amount.

Mrs. Ortega argues by reference to a remittitur case, *Smith v. Kmart Corp.*, 177 F.3d 19 (1st Cir. 1999). In that case, a husband and wife were shopping in defendant's store when the wife was struck on the head by a cooler that fell from a shelf. *Id.* at 22. As a result of the blow, the wife lost consciousness for close to a minute, leading the husband to administer mouth-to-mouth resuscitation. *Id.* at 22. He testified that he believed his wife was dead. *Id.* at 23. Eventually an ambulance arrived, and paramedics placed a cervical collar around the wife's neck and transported her on to the ambulance using a stiff board that had been placed underneath her. *Id.* at 22. The wife suffered from the blow for months after the injury. *Id.* The jury awarded the husband $250,000 in emotional distress damages, and the appellate court remitted that award to $100,000. *Id.* at 32-33. Mrs. Ortega argues that her case is similar to the husband's in *Smith* and that even the $100,000 amount to which damages were remitted in that case is larger than the $75,000 minimum.

Mrs. Ortega's reliance on *Smith* fails even though both the original award and the reduced amount were greater than the jurisdictional minimum, because Mrs. Ortega's case is not sufficiently factually similar to *Smith*. Beatriz's injury, on the basis of the plaintiffs' complaint, was not nearly as dramatic or disruptive as the wife's injury in *Smith*. No one believed that Beatriz would die of the cut on her finger and there was no dramatic witnessing of the accident, unlike in *Smith*. Moreover, unlike the husband in Smith, Mrs. Ortega has not alleged that the accident has in any way strained her relationship with Beatriz. *See id.* at 23.

Beatriz's sister Patrizia has an even less substantial claim for emotional distress damages than her mother. Patrizia was a student in Washington, D.C. at the time of the injury and did not return home due to the accident. Although she

did take Beatriz to some physical therapy sessions after she returned from school over the summer, Patrizia did not miss any work or school obligations to do so. Like the others, there is no evidence of Patrizia's receiving any counseling services in connection with her little sister's injury. It is legally certain that Patrizia could not recover an award over $75,000 for her emotional distress.

It is also legally certain that the claims of Beatriz's father, Sergio Blanco, do not meet the $75,000 threshold. Mr. Blanco is divorced from Beatriz's mother and does not live with Beatriz. He spent half a day at the hospital during Beatriz's surgery, but he did not bring Beatriz to any medical appointments. Mr. Blanco's claim to emotional distress damages over $75,000 is too tenuous.

In short, only Beatriz's claim satisfies the jurisdictional requirements of § 1332. Her family members' claims do not meet the minimum amount-in-controversy, and no other independent basis for federal jurisdiction (*e.g.*, federal question jurisdiction) exists over those claims.

B. Supplemental Jurisdiction under § 1367

This leaves the issue of supplemental jurisdiction. Beatriz's family members cannot file their own suits against Star-Kist in federal court. The question is whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, allows them to proceed in federal court nonetheless on the basis of Beatriz's jurisdictionally sufficient claim.

Though simple to state, the question has not been answered in this circuit,[4] and its proper resolution is far from clear. The courts of appeals are sharply divided over whether § 1367 allows parties who cannot themselves satisfy § 1332's amount-in-controversy requirement to sue in

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[4] We noted the issue in the class-action context in *Spielman v. Genzyme Corp.*, 251 F.3d 1, 7 n.5 (1st Cir. 2001).

federal court by joining forces with a plaintiff who can. The Supreme Court once granted certiorari to resolve the matter, but it ultimately split 4-4 and affirmed without opinion. *See Free v. Abbott Labs., Inc.*, 529 U.S. 333 (2000).[5]

The problem has actually arisen in two contexts, each of which is the subject of a circuit split. First, there are cases—like Beatriz's—involving the ordinary joinder of additional plaintiffs under Fed. R. Civ. P. 20. *Compare Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir. 1996) (where one plaintiff satisfies the amount-in-controversy requirement, § 1367 permits jurisdiction over transactionally related claims by co-plaintiffs who do not), *with Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999) (each co-plaintiff must independently satisfy the amount-in-controversy requirement). Second, there are cases involving the claims of absent class members in diversity-only class actions. *Compare Allapattah Serv., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1254 (11th Cir. 2003) (section 1367 authorizes jurisdiction over all class members' claims if the named plaintiffs satisfy the amount-in-controversy requirement); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 934 (9th Cir. 2001) (same); *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 114 (4th Cir. 2001) (same); *and In re Abbott Labs.*, 51 F.3d 524, 528 (5th Cir. 1995) (same), *with Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000) (section 1367 does not extend jurisdiction over class members who do not independently meet the amount-in-controversy requirement); *and Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998) (same).[6] Because the same statutory language applies

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[5] An unexplained affirmance by an equally divided Court has no precedential value. *See Rutledge v. United States*, 517 U.S. 292, 304 (1996).

[6] The district courts in our circuit are similarly split. *Compare Payne v. Goodyear Tire & Rubber Co.*, 229 F. Supp. 2d 43, 52 (D. Mass. 2002)

in both contexts, some courts have lumped the two together for purposes of § 1367. *See, e.g., Meritcare*, 166 F.3d at 218; *Stromberg*, 77 F.3d at 931. Our case involves only Rule 20 joinder, however, and we express no view regarding the application of § 1367 in class actions.[7]

Even aside from the circuit split, this is an area where courts are wise to tread carefully. The problem of pendent-party jurisdiction implicates some of the most sensitive and enduring issues in the law of federal jurisdiction, and it directly affects the allocation of judicial business among the state and federal courts. In the end, certainty can come only from Congress or the Supreme Court. For now, we disagree with the Seventh Circuit and join the Third Circuit in holding that, at least in cases of Rule 20 joinder, § 1367 did not upset the settled rule that each plaintiff must independently satisfy the diversity statute's amount-in-controversy requirement.

1. *Background*

Before 1990, it is clear, Beatriz's family members could not have joined in Beatriz's diversity suit unless they each stood to recover more than the minimum amount required for jurisdiction. As early as 1911, the Supreme Court declared that "[w]hen two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the

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(section 1367 permits supplemental jurisdiction over pendent party plaintiffs who do not themselves satisfy requirements of § 1332); *and Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 60 (D. Mass. 1997) (same), *with Arias v. Am. Airlines, Inc.*, 163 F. Supp. 2d 111, 115 (D.P.R. 2001) (each plaintiff must independently meet the requirements of diversity jurisdiction); *and Mayo v. Key Fin. Servs., Inc.*, 812 F. Supp. 277, 278 (D. Mass. 1993) (same).

[7] In our view, class actions raise unique problems that will be better addressed with the benefit of briefing and argument in a case requiring us to consider them. *See infra* note 19.

requisite jurisdictional amount." *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40 (1911). That rule is now commonly associated with *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), which reaffirmed *Troy Bank* after the adoption of the Federal Rules of Civil Procedure. *See* 306 U.S. at 589. Even after *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), in which the Supreme Court approved pendent-claim jurisdiction in federal-question cases, *see id.* at 725, *Clark* remained good law: "[M]ultiple plaintiffs with separate and distinct claims must each satisfy the jurisdictional-amount requirement for suit in the federal courts." *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973); *see also Aldinger v. Howard*, 427 U.S. 1, 15-16 (1976) (distinguishing pendent-party jurisdiction from the type of pendent-claim jurisdiction permitted in *Gibbs*). If the *Clark* rule applies in this case, we should affirm the dismissal as to Beatriz's family members but vacate as to Beatriz, thereby leaving Beatriz free to choose between proceeding alone in federal court or voluntarily dismissing her complaint and re-filing together with her family in the Puerto Rico courts. *See Clark*, 306 U.S. at 590.

Whether *Clark* continues to apply today depends on how one reads 28 U.S.C. § 1367, the supplemental jurisdiction statute, which was enacted by Congress in 1990. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, § 310. In relevant part, § 1367 provides:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

The impetus for Congress's adoption of § 1367 was the Supreme Court's 5-4 decision in *Finley v. United States*, 490 U.S. 545 (1989). *See generally Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 539-40 (2002). *Finley* did not deal with the amount-in-controversy requirement. Rather, the plaintiff in *Finley* had filed suit against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), alleging that the government's failure to maintain certain airport runway lights had contributed to the death of her husband and children in an airplane accident. 490 U.S. at 546. Later, she amended her complaint to add state-law tort claims against two new defendants, a municipality and a utility company. No independent basis for federal subject-matter jurisdiction existed over those claims. *Id.* The Supreme Court acknowledged that the plaintiff could not have brought her entire action in state court because federal jurisdiction in FTCA cases is exclusive, but it held nevertheless that the district court lacked jurisdiction over the "pendent-party" state-law claims. *Id.* at 555-56. The Court concluded by noting that Congress was free to reverse that result if it wished. *Id.* at 556.

Congress did so in § 1367. *See Raygor*, 534 U.S. at 540; *id.* at 550 (Stevens, J., dissenting); *Ponce Fed. Bank, F.S.B. v. The Vessel "Lady Abby"*, 980 F.2d 56, 58 (1st Cir. 1992) (Breyer, C.J.) (section 1367 overturns *Finley*). The text of the statute, however, can be read to do more than overturn

Finley.[8] The jurisdictional grant, which appears in section (a), is not limited to cases like *Finley* involving exclusive federal jurisdiction, or even to federal-question cases generally. Instead, subsection (a) permits the district courts to hear any claim arising from the same constitutional case or controversy "in any civil action of which the district courts have original jurisdiction." Subsection (b) then creates an exception to that grant for certain claims in diversity cases. The result is a jurisdictional grant of such apparent breadth that, as one commentator succinctly put it, "the statute has created confusion in a number of areas in which principles were thought to be well established." 13B Wright, Miller, & Cooper, *Fed. Prac. & Proc.* § 3567.2 (2d ed. 2003).

2. *Section 1367 and the* Clark *Rule*

One such area of confusion involves the continued validity of *Clark* in the wake of § 1367. The case law on this issue is split between two competing interpretations of § 1367.

The first, adopted by the Seventh Circuit in *Stromberg*, turns on Congress's failure to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332. *See* § 1367(b) (restricting supplemental jurisdiction over parties joined as plaintiffs under Rules 19 or 24, but omitting Rule 20 plaintiffs). On this reading, § 1367 overturns *Clark* and extends supplemental jurisdiction over claims asserted by diversity plaintiffs who cannot meet the

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[8] *See* Arthur & Freer, *Grasping at Burnt Straws: The Disaster of the Supplemental Jurisdiction Statute*, 40 Emory L.J. 963, 980 (1991) ("Congress could have overruled the holding in *Finley* quite simply and cleanly, without affecting other areas. . . . Why the statute had to go further, we do not know. That the statute went further, there can be no doubt.").

amount-in-controversy requirement, provided that at least one plaintiff in the action has a jurisdictionally sufficient claim. *See Stromberg*, 77 F.3d at 930-32.

The second interpretation, originally suggested in an article by Professor Pfander[9] and later adopted by the Tenth Circuit in *Leonhardt*, emphasizes the requirement in § 1367(a) that the district court must first have "original jurisdiction" over an action before supplemental jurisdiction can apply. *See Leonhardt*, 160 F.3d at 640 (citing Pfander). On this reading, § 1367 *preserves* the rule in *Clark* and thus does not supply supplemental jurisdiction where, as in this case, only one of the named plaintiffs meets the amount in controversy. Although *Leonhardt* was a class action case, the Third Circuit subsequently endorsed its reasoning in *Meritcare*, a Rule 20 joinder case with facts analogous to the case at bar. *See* 166 F.3d at 221-22 (citing *Leonhardt* with approval).

We recognize that plausible textual arguments can be made in favor of either of these readings. For the reasons that follow, however, we conclude that *Leonhardt* and *Meritcare* embody the better reading of § 1367.

a. *Text of § 1367*

We begin with the text of the statute. *BedRoc Ltd. v. United States*, 124 S. Ct. 1587, 1593 (2004). Given the historical and legal background against which Congress enacted § 1367, we think the *Leonhardt/Meritcare* approach makes the best sense of the statutory text. Still, neither *Leonhardt* nor *Meritcare* fully explained the historical and doctrinal significance of Congress's choice of words in § 1367. Given the long history of the Judicial Code and the enormous body of law and scholarship that surrounds it, that

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[9] Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999).

context provides a crucial guide to the meaning of the statute. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570, 1579 (2004) (assuming, in interpreting a federal statute, that "Congress legislated against [a] background of law, scholarship, and history").

The first sentence of § 1367 specifies that supplemental jurisdiction can only apply in a "civil action of which the district courts have original jurisdiction." § 1367(a). That phrase unambiguously invokes the language that Congress has used for more than two hundred years to confer jurisdiction on the federal district courts in civil cases. Nearly every jurisdictional grant in Title 28 provides that "the district courts shall have original jurisdiction" of "civil action[s]" within the scope of the grant. *See, e.g.*, 28 U.S.C. § § 1331 (federal questions), 1332 (diversity), 1335 (interpleader), 1337 (antitrust), 1338 (intellectual property), 1339 (postal matters), 1340 (internal revenue). Such grants, in turn, have been the subject of judicial interpretation for centuries. *E.g., Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). By invoking the concept of a district court's "original jurisdiction" over a "civil action," Congress presumptively incorporated into § 1367 the longstanding, judicially developed doctrines that determine whether those statutes confer "original jurisdiction" over a particular civil action. *See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 614-15 (2001) (Scalia, J., concurring) ("[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken . . . ." (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952))).

That is important because, under well-settled law, joinder and aggregation have different implications for the existence of "original jurisdiction" in federal-question and diversity cases. Under the federal-question statute, 28 U.S.C. § 1331, the original jurisdiction of the district courts is triggered if

the action "aris[es] under the Constitution, laws, or treaties of the United States." All that is required is the federal question. *Osborn v. Bank of United States*, 22 U.S. (9 Wheat) 738, 822 (1824) (Marshall, C.J.); *see City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164-66 (1997). Joinder questions arise only after "original jurisdiction" is established, and only to the extent that the court seeks to decide non-federal questions incident to disposition of the federal question.[10] *See Osborn*, 22 U.S. at 822.

Under § 1332, by contrast, joinder and aggregation questions can actually *determine* whether the district court has "original jurisdiction" over the action. Joinder affects original jurisdiction through the complete diversity rule of *Strawbridge v. Curtiss, supra*. *See Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998) ("The presence of [a] nondiverse party automatically destroys original jurisdiction . . . ."). Aggregation issues affect original jurisdiction because *Clark* prohibits multiple plaintiffs from combining their claims to clear the amount-in-controversy bar. *See* 306 U.S. at 589. *Strawbridge* and *Clark*, in turn, are binding interpretations of the diversity statute. *See State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 530-31 (1967) (complete diversity rule is statutory); *Snyder v. Harris*, 394 U.S. 332, 336 (1969) (*Clark* anti-aggregation rule is statutory). Unless both rules are satisfied, the statute does not confer original jurisdiction on the district court. *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 449 (1850) ("Courts created by statute can have no jurisdiction but such as the statute confers.").

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[10] Until 1980, the federal question statute also had an amount-in-controversy requirement. *See* Act of Dec. 1, 1980, Pub. L. No. 96-486, § 2, 94 Stat. 2369 (eliminating the amount-in-controversy requirement from § 1331). If that requirement were still in effect today, aggregation issues would affect the existence of "original jurisdiction" under § 1331.

Thus, Congress preserved both *Clark* and *Strawbridge* by providing that, before supplemental jurisdiction can attach, the district court must first have "original jurisdiction" over the action. *See* Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 148-49 (1999). In a diversity case, if the *Clark* rule is not met, or if the parties are not completely diverse, then the "original jurisdiction" requirement in § 1367(a) is not satisfied and supplemental jurisdiction will not attach. On the other hand, if the parties are completely diverse and each plaintiff separately meets the amount-in-controversy requirement, then § 1332 is satisfied and the "original jurisdiction" requirement is met. If so, § 1367 will support any transactionally related claims that the plaintiffs may wish to bring—but only so long as § 1367(b) is satisfied, and only as long as original jurisdiction is not destroyed. This last qualification is important because it precludes a plaintiff from, for example, using § 1367 to circumvent *Strawbridge* by amending her complaint to add a nondiverse party after "original jurisdiction" is initially established. *Cf. Grupo Dataflux v. Atlas Global Group, L.P.*, 124 S. Ct. 1920, 1926 (2004) (noting that a post-filing change in the *parties* to an action, unlike a change in the initial parties' citizenship, can affect subject-matter jurisdiction); *Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, L.P.*, 362 F.3d 136, 140-41 (1st Cir. 2004) (subject-matter jurisdiction was destroyed and dismissal was required where a diversity plaintiff amended its complaint to join a non-diverse party).

On this reading of § 1367, Beatriz's family members cannot rely on supplemental jurisdiction to support their claims: their complaint does not satisfy *Clark*, so "original jurisdiction" fails under § 1332. *Snyder*, 394 U.S. at 336. As a result, this "civil action" is not one "of which the district courts have original jurisdiction," and § 1367 does not apply.

We are persuaded to adopt this reading of the statutory text for several reasons. First, it gives effect to Congress's requirement that the district court must have "original jurisdiction" over the "civil action" before supplemental jurisdiction can apply. *See Bui v. DiPaolo*, 170 F.3d 232, 237 (1st Cir. 1999) (statutes should be interpreted to give effect to every word and phrase). Congress could have applied a different test in § 1367(a)—for example, it could have permitted supplemental jurisdiction whenever any single claim in the action would have supported original jurisdiction if it had been brought by itself.[11] But that is not what the statute says.[12] *See* Pfander, *supra*, at 141 (noting

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[11] The dissent would apply such a test in this case. According to the dissent, § 1367 authorizes supplemental jurisdiction whenever the district court has "original jurisdiction over a *claim*." (emphasis added). The problem with the dissent's theory is that § 1367(a) does not refer to original jurisdiction over "claims." Rather, the statute requires a "*civil action* of which the district courts have original jurisdiction." § 1367(a) (emphasis added).

That distinction is critical. The Supreme Court has never held that original jurisdiction exists over a "civil action" under § 1332 simply because *one claim* in the action is between diverse parties and exceeds the jurisdictional minimum. On the contrary, original jurisdiction does not lie unless *all* of the parties in the case are diverse. *See Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998) ("A case falls within the federal district court's 'original' diversity 'jurisdiction' only if diversity of citizenship among the parties is complete, *i.e.*, only if there is no plaintiff and no defendant who are citizens of the same State."). Similarly, § 1332 is not satisfied, and original jurisdiction over the "civil action" does not exist, unless *each* plaintiff independently satisfies the amount-in-controversy requirement. *Snyder*, 394 U.S. at 336; *Clark*, 306 U.S. at 589. Because the complaint in this case fails this requirement, original jurisdiction over the "civil action" is absent and § 1367 is inapplicable.

[12] The dissent argues that a single claim is sufficient to create original jurisdiction over a "civil action" under § 1332 because courts are not normally required to dismiss the entire action when a jurisdictional flaw is discovered. Rather, a court may simply dismiss the offending parties.

that the statute "appears to reject the notion that a single, jurisdictionally sufficient claim will support the exercise of plenary pendent jurisdiction in diversity matters").

Second, our reading of § 1367's "original jurisdiction" requirement is consistent with the settled meaning of identical language in 28 U.S.C. § 1441, the removal statute. Section 1441, like § 1367, applies only if the "civil action" in question is one "of which the district courts . . . have original jurisdiction." § 1441(a). Relying on that language, the Supreme Court has interpreted § 1441 to prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance. *See, e.g., Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 33 (2002); *Okla. Tax Comm'n v. Graham*, 489 U.S. 838, 840 (1989) (per curiam). Section 1441 has thus been held to incorporate the well-pleaded complaint rule, *see City of Chicago*, 522 U.S. at 163; the complete diversity rule, *see Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 73 (1996); and rules for calculating the amount in controversy, *see St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291-92 (1938). By the time Congress enacted § 1367 in 1990, this interpretation of § 1441(a) was well-settled. *See, e.g., Okla. Tax Comm'n*, 489 U.S. at 840; *Caterpillar Inc. v. Williams*,

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See, e.g., Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 836 (1989) (courts of appeals may cure jurisdictional defects by dismissing dispensable nondiverse parties); *Clark*, 306 U.S. at 590 (dismissing parties who failed to meet the amount-in-controversy requirement but retaining jurisdiction over the party that satisfied it). This argument confuses the *existence* of original jurisdiction with remedies for its absence. Original jurisdiction over the "civil action" may be *achieved* by dismissing certain dispensable parties. But as long as the offending parties are present, original jurisdiction over the "civil action" cannot exist, *see Schacht*, 524 U.S. at 389 ("The presence of [a] nondiverse party automatically destroys original jurisdiction . . . ."), regardless of whether any single claim in the action would satisfy § 1332 by itself.

482 U.S. 386, 392 (1987); *Met. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27 (1983).

Given this background, it is significant that Congress included the same "original jurisdiction" requirement in § 1367. *See Erlenbaugh v. United States*, 409 U.S. 239, 243-44 (1972) (noting that "practical experience in the interpretation of statutes [indicates that] a legislative body generally uses a particular word with a consistent meaning in a given context"). Congress purposefully employed language in § 1367(a) that had already been interpreted in § 1441 to incorporate the traditional doctrines of federal jurisdiction—including *Strawbridge* and *Clark*.

Another advantage of our interpretation of § 1367 is that it aligns statutory supplemental jurisdiction with the judicially developed doctrines of pendent and ancillary jurisdiction as they existed prior to *Finley*. Congress took the opportunity in § 1367 to codify the doctrines of pendent and ancillary jurisdiction under a single heading. *See City of Chicago*, 522 U.S. at 165; *Iglesias v. Mut. Life Ins. Co.*, 156 F.3d 237, 241 (1st Cir. 1998). Neither of those doctrines permitted a diversity plaintiff to circumvent the requirements of § 1332 simply by joining her claim in an action brought by another, jurisdictionally competent diversity plaintiff.[13] We see no

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[13] The doctrine of pendent jurisdiction, which allowed plaintiffs to assert non-federal claims in federal court, was applicable only in federal-question cases. *See* 7C Wright, Miller, & Kane, *Fed. Prac. & Proc.* § 1917 n.7 (2d ed. 2004); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 348-49 (1988); *see also Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978) (noting that the lower court had erred in relying on *Gibbs*, a pendent jurisdiction case, because the case before the court did not involve a federal claim). Ancillary jurisdiction, by contrast, applied in both federal-question and diversity cases, but that doctrine "typically involve[d] claims *by a defending party* haled into court against his will." *Kroger*, 437 U.S. at 376 (emphasis added); *see also id.* at n.18. Moreover, the Court in *Kroger* made clear that a party could not resort to

indication in § 1367 that Congress wanted to alter that rule. Notably, where Congress *did* intend to alter existing law in § 1367, it took pains to do so directly and unequivocally. *See* § 1367(a) (repudiating *Finley* in a separate sentence: "Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.").

Finally, our interpretation explains the omission of Rule 20 plaintiffs from § 1367(b). This was the "apparent incongruity" on which the Seventh Circuit relied in *Stromberg*. *See* 77 F.3d at 932. *Strombĕrg* reasoned that because Congress omitted claims by Rule 20 plaintiffs from § 1367(b), it must have intended to allow permissively joined plaintiffs to bring claims that § 1332 would not otherwise support. *Id.* at 931-32. In our view, there is a better explanation. The permissive joinder of a nondiverse party, whether in the original complaint or afterwards, destroys complete diversity and thus deprives the court of "original jurisdiction." *Schacht*, 524 U.S. at 389; *Am. Fiber & Finishing*, 362 F.3d at 140-41. Likewise, "original jurisdiction" is destroyed by the joinder of a Rule 20 plaintiff who, like Beatriz's family members, cannot satisfy the amount-in-controversy requirement. *See Snyder*, 394 U.S. at 336-37 (noting that the requirement that each plaintiff must separately pass the amount-in-controversy bar derives from § 1332).[14] Supplemental jurisdiction in such a case fails at

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ancillary jurisdiction where doing so would effectively circumvent the complete diversity rule. *See id.* at 375-77.

[14] The Supreme Court has not specifically held that plaintiffs joined under Rule 20 *after* the filing of the original complaint must also satisfy the amount-in-controversy requirement. That result, however, is probably inevitable in light of *Clark* and *Snyder*, for "[o]therwise an appellate court could be called on to sustain a decree in favor of a plaintiff who had not shown that his claim involved the jurisdictional amount, even though the suit were dismissed on the merits as to the other

the threshold of § 1367(a), so there was simply no need for Congress to include Rule 20 plaintiffs in subsection (b) in order to preserve *Clark* or *Strawbridge*. *See* Pfander, *supra*, at 148.

A few courts have rejected this reading of § 1367 on the ground that nothing in the statute suggests the phrase "original jurisdiction" has a different meaning in diversity cases than in federal-question cases. *See, e.g., Gibson v. Chrysler Corp.*, 261 F.3d 927, 936 (9th Cir. 2001); *Payne v. Goodyear Tire & Rubber Co.*, 229 F. Supp. 2d 43, 50-51 (D. Mass. 2002). That argument is misplaced. The requirement of "original jurisdiction" in § 1367(a) has the same meaning in every case: that some underlying statutory grant of original jurisdiction must be satisfied. What differs between federal question and diversity cases is not the meaning of "original jurisdiction" but rather the requirements of sections 1331 and 1332. Under § 1331, the sole issue is whether a federal question appears on the face of the plaintiff's well-pleaded complaint; the identity of the parties and the amounts they stand to recover are largely irrelevant. Section 1332, by contrast, predicates original jurisdiction on the identity of the parties (*i.e.*, complete diversity) and their ability to meet the amount-in-controversy requirement. So the "original jurisdiction" language in § 1367 operates differently in federal-question and diversity cases not because the meaning of that term varies, but because the requirements of the underlying statutes are different.

Nor does this reading of the statute make § 1367(b) superfluous. By itself, § 1367(a) would authorize a wide

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plaintiffs who had established the jurisdictional amount for themselves." *Clark*, 306 U.S. at 590; *cf. Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP*, 362 F.3d 136, 140-41 (1st Cir. 2004) (addition of a non-diverse party after filing of original complaint destroyed diversity jurisdiction).

variety of supplemental claims in diversity cases—counterclaims by defendants, cross-claims among plaintiffs, claims by and against intervenors, and so on. Section § 1367(b) is important because it ensures that this authorization does not functionally undermine the requirements of § 1332. Suppose, for example, that the defendant in a diversity case impleads a nondiverse party under Fed. R. Civ. P. 14. Section 1367(b) would prevent the plaintiff from asserting a non-federal claim against the impleaded party. This example, of course, is *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978), in which the Supreme Court held that permitting ancillary (now supplemental) jurisdiction over such a claim would allow diversity plaintiffs to "defeat the statutory requirement of complete diversity by the simple expedient of suing only those defendants who were of diverse citizenship and waiting for them to implead nondiverse defendants." *Id.* at 374. Section 1367(b) codifies *Kroger's* anti-circumvention rationale, not merely as against parties impleaded under Rule 14, but in a variety of situations in which "original jurisdiction" may technically exist but the exercise of supplemental jurisdiction "would be inconsistent with the jurisdictional requirements of section 1332." *See* Rowe, Burbank, & Mengler, *A Coda on Supplemental Jurisdiction*, 40 Emory L.J. 993, 995 (1991) (explaining that subsection (b) implements *Kroger's* rationale). Nothing about our interpretation of § 1367(a) obviates this provision.

Admittedly, our reading of § 1367 is not perfect. One difficulty is that while § 1367(b) does not mention Rule 20 plaintiffs, it does refer to "claims by persons proposed to be joined as plaintiffs under Rule 19"—a reference that is technically unnecessary under our reading of the statute, since the joinder of a nondiverse party as an indispensable plaintiff would likewise destroy original jurisdiction under

§ 1332.[15] *See, e.g., Gonzalez v. Cruz*, 926 F.2d 1, 5 (1st Cir. 1991). And, on policy grounds, there are certainly litigation efficiencies to be gained by an interpretation of § 1367 that would permit Beatriz's family members' claims to proceed in federal court alongside her own. *See Stromberg*, 77 F.3d at 932.

But no reading of § 1367 is perfect—the alternative approach embodied in *Stromberg*, for example, accords no significance to Congress's use of the term "original jurisdiction." In light of the historical and legal context to Congress's enactment of § 1367, including the settled interpretation of § 1441 and the established limits on pendent and ancillary jurisdiction, we conclude that Congress intended to preserve the *Clark* anti-aggregation rule by requiring that the district courts must have "original jurisdiction" over the "civil action" before supplemental jurisdiction will lie.

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[15] Congress may have included the reference to Rule 19 plaintiffs simply to be clear that a plaintiff joined as an indispensable party under Rule 19 is in exactly the same situation as one who intervenes as of right under Rule 24(a). Before the enactment of § 1367, ancillary jurisdiction worked differently under Rules 19 and 24. *See generally* Rowe, Burbank, & Mengler, *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213, 215 (Dec./Jan. 1991) (describing the identical treatment of plaintiffs under Rules 19 and 24 as the "one modest but significant way" in which § 1367(b) was intended to alter prior law).

Similarly, others have offered explanations for the reference in § 1367(b) to claims *against* persons made parties under Rule 19 or 20. *See, e.g.*, Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 144-46 (1999) (Rule 20 defending parties); Rowe, Burbank, & Mengler, *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, at 957-58 (1991) (hereinafter Rowe et al., *Compounding or Creating Confusion)* (Rule 19 defending parties).

b. *Section 1367 and the Complete Diversity Rule*

There is a further reason why we reject the alternative reading of § 1367 set out in the Seventh Circuit's opinion in *Stromberg*. As we have said, *Stromberg's* reading of the statutory text is, while imperfect, at least plausible. Yet it also has surprising and far-reaching consequences: if § 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs. Nothing in the statute distinguishes between the *Clark* amount-in-controversy requirement and the complete diversity rule in *Strawbridge*. So if *Stromberg's* interpretation of § 1367 is correct, Congress overturned nearly 200 years of case law interpreting § 1332 and authorized a potentially huge expansion of the federal docket. Moreover, it did so not by amending the diversity statute itself, but instead by failing to mention Rule 20 plaintiffs in § 1367(b).[16]

We do not think Congress intended § 1367 to work such a revolution in the law of diversity jurisdiction. *Cf. Whitman*

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[16] *Stromberg* itself recognized that "[s]upplemental jurisdiction has the potential to move from complete to minimal diversity." 77 F.3d at 932. Nevertheless, the court concluded that § 1367(b) is adequate to protect the interests served by the *Strawbridge* complete diversity rule. *Id.* Like many commentators, we disagree. *See, e.g.*, Fallon, Meltzer, & Shapiro, *Hart & Wechsler's The Federal Courts and The Federal System* 1491 (5th ed. 2003) (describing the omission of Rule 20 plaintiffs from § 1367(b) as "puzzling" because it allows plaintiffs "to circumvent the complete diversity requirement of § 1332"); Gold, Note, *Supplemental Jurisdiction over Claims by Plaintiffs in Diversity Cases: Making Sense of 28 U.S.C. § 1367(b)*, 93 Mich. L. Rev. 2133, 2167 n.140 (1995) (the omission of Rule 20 plaintiffs must be "inadvertent[ ]" because a literal reading of § 1367(b) "would allow plaintiffs to strategically circumvent the complete diversity requirement"); Rowe et al., *Compounding or Creating Confusion, supra*, at 961 n.91 (describing § 1367(b)'s silence about Rule 20 plaintiffs as a "potentially gaping hole in the complete diversity requirement").

v. Am. Trucking Assns., 531 U.S. 457, 467-68 (2001) ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). Congress has long maintained a policy of *restricting* diversity jurisdiction, not expanding it, chiefly by raising the amount-in-controversy bar.[17] Indeed, the same congressional Federal Courts Study Committee that proposed overturning *Finley* and codifying supplemental jurisdiction also proposed *eliminating* most forms of diversity jurisdiction. *See* Federal Courts Study Committee, *Report of the Federal Courts Study Committee* 39 (1990) ("We believe that diversity jurisdiction should be virtually eliminated. . . . [N]o other step will do anywhere nearly as much to reduce federal caseload pressures and contain the growth of the federal judiciary."). Congress did not accept that proposal, to be sure, but that hardly suggests it wanted to *expand* diversity jurisdiction. On the contrary, only a few years after enacting § 1367, Congress again raised the amount-in-controversy bar in an effort to reduce the diversity caseload in the federal courts. *See* Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 205, 110 Stat. 3847 (raising the minimum amount in controversy from $50,000 to $75,000). The Supreme Court, too, has repeatedly admonished that in light of the burgeoning federal

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[17] In 1887, the minimum amount in controversy was $2,000. *See* Act of March 3, 1887, 24 Stat. 552. Since that time, Congress has repeatedly raised, and never lowered, the required sum. *See* Act of March 3, 1911, 36 Stat. 1091 (raising the minimum amount in controversy to $3,000); Act of July 25, 1958, Pub. L. No. 85-554, § 2, 72 Stat. 415 (raising the minimum amount to $10,000); Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, § 201, 102 Stat. 4642 (1988) (raising the minimum amount to $50,000); Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 205, 110 Stat. 3847 (raising the minimum amount to $75,000). We leave aside the special case of class actions. *See infra* note 19.

caseload, diversity jurisdiction must be narrowly construed. *See, e.g., Snyder*, 394 U.S. at 340-41; *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76 (1941); *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Against this background, it is implausible to us that Congress undermined *Strawbridge* and overturned *Clark* by such an unlikely and obscure device as the omission of Rule 20 plaintiffs from § 1367(b). *Nixon v. Mo. Mun. League*, 124 S. Ct. 1555, 1564 (2004) (refusing to adopt a textually plausible interpretation of a statute because it was "farfetched that Congress meant . . . to start down such a road in the absence of any clearer signal"); *Chisom v. Roemer*, 501 U.S. 380, 396 & n.23 (1991) ("[I]f Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it . . . . Congress' silence in this regard can be likened to the dog that did not bark.").

Moreover, Congress has continued to regard *Strawbridge* as good law even after § 1367. Since 1990, Congress has enacted at least two statutes limiting the rule of complete diversity. Each time, Congress has done so clearly and conspicuously, carefully circumscribing the situations in which *Strawbridge* will not apply. *See* Multiparty, Multiforum Trial Jurisdiction Act of 2002, Pub. L. No. 107-273, § 11020(b)(1)(A), 116 Stat. 1758 (codified at 28 U.S.C. § 1369) (granting the district courts original jurisdiction over "any civil action involving minimal diversity" between adverse parties arising from any single accident in which 75 natural persons died, and further defining "minimal diversity" in the case of both natural and corporate parties);[18]

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[18] The dissent points to the Multiparty, Multiforum Trial Jurisdiction Act (MMTJA) as evidence that Congress is backing away from its long history of restricting diversity jurisdiction. We disagree. Our conclusion is that Congress is keenly aware of the limits on diversity jurisdiction and

Y2K Act, Pub. L. No. 106-37, § 15(c), 113 Stat. 185 (1999) (codified at 15 U.S.C. § 6614(c)) (granting the district courts original jurisdiction over "any Y2K action that is brought as a class action," except where a "substantial majority" of the plaintiff class is from the same state as the "primary" defendants and the claims in the action will be governed primarily by the law of that state).

Congress thus knows how to limit *Strawbridge* clearly when it wishes, and it would have had little reason to enact these statutes if it believed that it had already undermined the complete diversity rule in the supplemental jurisdiction statute. Plainly it did not so believe, and that understanding informs our choice among plausible interpretations of § 1367. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) ("At the time a statute is enacted, it may have a range of plausible meanings. Over time, however, subsequent acts can shape or focus those meanings. . . . This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand.").

c. *Legislative History of § 1367*

Finally, the legislative history of § 1367 strongly corroborates the conclusion that Congress did not intend to repudiate *Clark* or *Strawbridge*. Resort to legislative history is appropriate where, as here, the text of a statute is susceptible to two textually plausible interpretations. *Lapine v. Town of Wellesley*, 304 F.3d 90, 97 (1st Cir. 2002); *Hernandez-Colon v. Sec. of Labor*, 835 F.2d 958, 960 (1st Cir. 1988). That is particularly true in this case, given that our sister circuits have reached conflicting answers to the same question based on the same statutory text. *Cf. In re*

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expects those limits to apply except where, as in the MMTJA, it specifically and unambiguously alters them.

Bankvest Capital Corp., 360 F.3d 291, 297 (1st Cir. 2004) ("[W]e are hard-pressed to endorse any 'plain meaning' argument where, as here, other federal courts have reached conflicting answers to the same question based on the same 'plain' language.").

The legislative history of § 1367 is somewhat muddled in its details, but one fact is certain: Congress did not believe that § 1367 would make significant changes to the law of diversity jurisdiction. The House Judiciary Committee report—the only congressional report concerning the provision that became § 1367—stated that the bill was intended to "essentially restore the pre-*Finley* understandings of the authorization for and limits on . . . supplemental jurisdiction." H. Rep. No. 101-734, at 28 (Sept. 10, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, at 6874. The same report made clear that Congress anticipated no sweeping changes in the operation of § 1332: "In diversity cases, the district courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." *Id.*

The bill's sponsors similarly did not believe that § 1367 would alter the fundamental rules of diversity jurisdiction. Senator Grassley stated that the bill did not "represent major changes in the law." 136 Cong. Rec. at S17578 (Oct. 27, 1990). He and other sponsors repeatedly described the bill as "noncontroversial." *See, e.g.*, *id.*; *id.* at H13313 (Oct. 27, 1990) (statement of Rep. Kastenmeier). And Congress treated it that way—committee hearings on the bill lasted only one day. *See* Rowe, Burbank, & Mengler, *supra*, at 1005 (describing the process afforded to the bill in Congress as "meager"). At no point in the legislative process did any member of Congress suggest that § 1367 would overturn

Clark, undercut the complete diversity rule or otherwise dramatically expand federal diversity jurisdiction.[19]

III.

We hold that § 1367 does not authorize jurisdiction over Beatriz's family members' claims. Those claims would have been barred under *Clark* before 1990, and we conclude that Congress did not upset that rule when it overturned *Finley* and codified the prior law of pendent and ancillary jurisdiction in § 1367.[20]

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[19] We express no view on the related but distinct issue of whether § 1367 overturns the Supreme Court's holding in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), that each class member in a diversity-only class action must meet the jurisdictional amount in controversy. *See id.* at 301. The application of § 1367 to diversity-only class actions is a different problem for several reasons, including because (1) the complete diversity rule applies with diminished force in the class-action context, *see Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 366 (1921); (2) section 1367(b) does not mention Rule 23 at all, while it mentions Rule 20 at least as to defending parties; and (3) there are conflicting signals in the legislative history as to whether Congress intended to overrule *Zahn*, *see Payne*, 229 F. Supp. 2d at 51-52 (summarizing the "murk[y]" legislative history on this point).

[20] The dissent argues that Congress could not have intended this result because it is too similar to the outcome in *Finley*, which Congress meant to overturn. The analogy to *Finley*, however, is both inaccurate and unpersuasive. *Finley* involved an exclusively federal claim under the FTCA; this case is predicated only on diversity. That is a critical difference: the rules of pendent jurisdiction have always been more flexible in federal-question cases than in diversity cases, *see supra* note 13, no doubt to facilitate a federal forum for claims arising under federal law. The federal interest in Beatriz's family members' ability to assert their state-law claims in federal court is much more attenuated.

In *Finley*, moreover, there was no forum available in which the federal plaintiff could assert all of her claims. *See Finley*, 490 U.S. at 555- 556. In this case, by contrast, such a forum is readily available: the courts of Puerto Rico. It was the plaintiffs who chose to sue in federal court. Against that background, the dissent's judicial efficiency arguments ring hollow. *Cf. Kroger*, 437 U.S. at 376 ("A plaintiff cannot complain if

The judgment of the district court is ***affirmed*** as to Beatriz's family members. As to Beatriz, the judgment is ***vacated*** and the case is ***remanded***. On remand, Beatriz may elect to proceed alone in federal court or, if she wishes, voluntarily dismiss her complaint so that she and her family may re-file in the Puerto Rico courts.

TORRUELLA, Circuit Judge (Concurring in part, dissenting in part II.B).

I concur in part II.A of the majority opinion. I also agree that courts are wise to tread carefully when deciding cases, such as this, where a court must interpret a statute defining the parameters of its own powers. My agreement with the majority opinion, however, ends there.

In an attempt to limit diversity jurisdiction, the majority opinion mixes a "sympathetic textualist" approach to statutory interpretation with a dash of legislative intent to reach a conclusion that is contrary to the plain language of § 1367. The irony of the majority opinion is that it espouses the virtue of legislative intent, yet adopts a reading of § 1367 that was never articulated by any Congressperson or their staff, by any judge or jurist, nor by any academics, or, most importantly, by any of the very drafters of the statute from the time the statute was adopted in 1990, until such "intent" was just espoused in 1998. Section 1367 was the law for over seven years before a new alternative interpretation of § 1367 was proposed by Professor Pfander and adopted by the Tenth Circuit. *See Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 639 n.6 (10th Cir. 1998). This dubious approach has now been adopted by this circuit, despite the fact that it ignores the plain meaning of § 1367, causes the same word

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ancillary jurisdiction does not encompass all of his possible claims in a case such as this one, since it is he who has chosen the federal rather than the state forum . . . .").

in the statute to have two meanings, and makes an entire provision of § 1367 meaningless.

It is because I believe that a court's role is limited to applying the statute, not changing the statute, that I respectfully dissent. In doing so, I join the majority of our sister circuits that have interpreted 28 U.S.C. § 1367 to grant a district court jurisdiction to hear a plaintiff's claim that does not meet the amount-in-controversy, if a co-plaintiff's claim satisfies the amount-in-controversy requirement.

I. *Joinder and class actions*

Before analyzing § 1367 and its meaning, one observation must be made. The majority begins its analysis of § 1367 by noting that our sister circuits are evenly split on the issue of whether § 1367 allows a plaintiff who does not independently meet the amount-in-controversy requirement of § 1332 to remain in federal court. This statement is misleading. While it is true that only two circuit courts, the Third and Seventh Circuits, have addressed § 1367's applicability outside the context of a class action, in reality, five circuit courts have interpreted § 1367 to allow a plaintiff who does not independently meet the amount-in-controversy requirement of § 1332 to remain in federal court, whereas three circuit courts require them to take their claims to state court.[21] Rather than addressing these cases and their

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[21] *Compare Allapattah Serv., Inc. v. Exxon Corp.*, 333 F.3d 1248 (11th Cir. 2003) (holding supplemental jurisdiction exists in a diversity class action as long as one named plaintiff satisfies the amount-in-controversy requirement); *Gibson v. Chrysler Corp.*, 261 F.3d 927 (9th Cir. 2001) (same), *cert. denied*, 534 U.S. 1104 (2002); *Rosmer v. Pfizer Inc.*, 263 F.3d 110 (4th Cir. 2001) (same), *cert. dismissed*, 536 U.S. 979 (2002); *Stromberg Metal Works, Inc.* v. *Press Mech. Inc.*, 77 F.3d 928 (7th Cir. 1996) (holding supplemental jurisdiction exists over a party who failed to meet the amount-in-controversy requirement); *In re Abbott Labs.*, 51 F.3d 524 (5th Cir. 1995) (holding supplemental jurisdiction exists in a diversity class action as long as one named plaintiff satisfies the amount-in-controversy requirement), *with Trimble v. Asarco, Inc.*, 232 F.3d 946

arguments, the majority opinion casts them aside by arguing that the class action context differs from the Rule 20 joinder context. Such a characterization is misguided for several reasons.

First, the majority opinion fails to acknowledge that for § 1367 purposes, *Clark* and *Zahn* stand for the same principle. In *Clark v. Paul Gray, Inc.*, the Supreme Court held that each plaintiff's claim must meet the amount-in-controversy requirement. 306 U.S. 583 (1939). In *Zahn v. Int'l Paper Co.*, the Supreme Court held that each class member's claim must meet the amount-in-controversy requirement. 414 U.S. 291, 301 (1973). Thus, *Clark* "is the nonclass analog to *Zahn*. Section 1367, on its face, overrules *Clark*, just as it overrules *Zahn*." Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 58 n.19 (2004).

This position has been adopted by every circuit court to consider the issue. As the Seventh Circuit noted, " § 1367 does not distinguish class actions from other cases . . . [and section 1367] affects *Clark* and *Zahn* equally." *Stromberg Metal Works*, 77 F.3d at 931.[22] Similarly, the Third Circuit, the only circuit with which the majority aligns itself, admits

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(8th Cir. 2000) (holding supplemental jurisdiction does not exist in class action diversity case); *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999) (holding supplemental jurisdiction does not apply to a diversity case); *Leonhardt*, 160 F.3d 631 (holding supplemental jurisdiction does not exist in class action diversity case).

[22] *See also In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599, 607 (7th Cir. 1997) (agreeing that § 1367 allows supplemental jurisdiction in either a class action or joinder situation); *Rosmer*, 263 F.3d at 122-29 (Motz, J., dissenting) (interpreting the majority's interpretation of § 1367 to apply to Rule 20 joinder as well as class actions).

that "the line of cases from *Pinel* to *Zahn* applies equally to joinder cases and class action." *Meritcare Inc.*, 166 F.3d at 218.[23] The purpose of *Zahn* was to clarify that, for amount-in-controversy purposes, the proposition established in *Clark* applies in the class action context. *See Zahn*, 414 U.S. at 301; *Snyder v. Harris*, 394 U.S. 332, 335-37 (1969) (treating class actions the same as cases with joined plaintiffs for purposes of aggregation rules).

Second, if a distinction were to be made between class actions and joinder, the distinction would favor allowing supplemental jurisdiction in joinder situations, and not in class action situations, as "it is hard to avoid remarking that allowing thousands of small claims into federal court via the class device is a substantially greater expansion of jurisdiction than is allowing a single pendent party." *Stromberg Metal Works*, 77 F.3d at 931. Thus, it is "easy to imagine wanting to overturn *Clark* but not *Zahn*; it is much harder to imagine wanting to overturn *Zahn* but not *Clark*, and we have no reason to believe that Congress harbored such a secret desire." *Id.*

II. *The plain meaning of § 1367*

When interpreting a statute, the starting point is the statute's text. *See Bennett v. City of Holyoke*, 362 F.3d 1, 9 (1st Cir. 2004). Section 1367(a) provides that district courts shall have supplemental jurisdiction over claims that form part of the same case or controversy as any civil action of which the court has original jurisdiction.[24] For diversity

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[23] *See also*, Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases*, 74 Ind. L.J. 5, 21-22 (1998).

[24] Section 1367(a) states: "(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that

purposes, a district court has original jurisdiction if the plaintiff's citizenship differs from the defendant's and the claim exceeds $75,000. *See* 28 U.S.C. § 1332.

Section 1367(b) creates exceptions to § 1367(a) if (1) jurisdiction is based on diversity (§ 1332), (2) the plaintiff is the party seeking to assert supplemental jurisdiction against persons made parties under Rule 14 (third-party practice), 19 (mandatory joinder), 20 (permissive joinder), or 24 (intervention) of the Federal Rules of Civil Procedure or persons proposed to be joined as plaintiffs or intervene as plaintiffs under Rules 19 and 24 respectively, and exercising jurisdiction over the supplemental claims would be inconsistent with the statutory requirements of diversity jurisdiction under § 1332.[25]

Section 1367(c) creates further exceptions, notably awarding a district court discretion to decline supplemental jurisdiction if the supplemental jurisdiction claim predominates over the claim that has original jurisdiction.[26]

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they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

[25] Section 1367(b) states: "In any civil action of which the district courts have original jurisdiction founded solely on [diversity], the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14 [third-party practice], 19 [mandatory joinder], 20 [permissive joinder], or 24 [intervention] of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332."

[26] Section 1367(c) states: "(c) The district courts may decline to exercise supplemental jurisdiction over a claim . . . if-- (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original

Applying § 1367(a) to the present case is straightforward. Before supplemental jurisdiction can apply, a district court must have original jurisdiction over a claim. In this case, the district court has jurisdiction over Beatriz's claims because Beatriz is a citizen of a different state than Star-Kist and has alleged claims for which it is not a legal certainty that the damages are less than $75,000. *See* 28 U.S.C. § 1332. Since the district court has jurisdiction over Beatriz's claims, it may assert supplemental jurisdiction over Beatriz's family members' claims if they arise out of the same case or controversy. *See* 28 U.S.C. § 1367(a). There is no dispute that all of the claims in this case arise out of the same case or controversy.

Supplemental jurisdiction may attach unless one of the exceptions applies. *See* 28 U.S.C. § 1367(b) & (c). The exceptions pertaining to Federal Rule of Civil Procedure 14 (third-party practice), Rule 19 (mandatory joinder), Rule 20 (permissive joinder), or Rule 24 (intervention) are inapplicable to this case as there are no claims by plaintiffs against persons made parties under those rules. The further exception pertaining to Federal Rule of Civil Procedure 19 does not apply as Beatriz's family members are not indispensable parties. The last exception pertaining to Federal Rule of Civil Procedure Rule 24 does not apply as the family members are not seeking to intervene. Thus, none of the exceptions in § 1367(b) apply.

The exceptions in § 1367(c) also do not apply. The claims of Beatriz's family members do not raise novel or complex issues of Commonwealth law, their claims do not substantially predominate Beatriz's claims, and there do not

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jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction."

tend to be any compelling reasons for declining jurisdiction. Thus, a plain, straightforward reading of § 1367 results in the district court having jurisdiction over Beatriz's family members' claims.

III. *The majority opinion's alternative approach*

The majority opinion disagrees with this conclusion, however, by arguing that the term "original jurisdiction" in § 1367(a) has two distinct meanings. In federal-question cases, § 1367 applies if *at least one* claim qualifies for "original jurisdiction." But, in diversity cases, the majority argues, § 1367 applies only if *all* claims qualify for original jurisdiction. This contrived reading of § 1367 is wrong for several reasons.

First, the majority's interpretation of § 1367(a) violates "the basic canon of statutory construction that identical terms within an Act bear the same meaning." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 479 (1992). In this case, not only does the majority opinion define identical terms differently, it defines the same term differently. There is "nothing in the text of subsection (a) to suggest, even remotely, that there is such a difference in meaning." *See Gibson*, 261 F.3d at 936; *Rosmer*, 263 F.3d at 115-16.

The majority opinion appears to be oblivious to this blatant violation of the rules of statutory construction because it believes Congress "*presumptively* incorporated into § 1367 the longstanding, judicially developed doctrines that determine whether those statutes confer 'original jurisdiction.'" (emphasis added). In addition to there being no authority for this "presumption," the majority incorrectly applies another longstanding doctrine that accompanies original jurisdiction to reach that conclusion. For supplemental jurisdiction purposes, the majority contends that the term "original jurisdiction" in a diversity case requires that *every* claim meet the requirement of "original jurisdiction." In stating this principle, the majority overlooks the process by which a court determines if "original

jurisdiction" exists. Both § § 1331 and 1332 "confer original jurisdiction over designated 'civil actions' . . . [which] consist of a cluster of claims, . . . [and which] the rules of federal subject-matter jurisdiction apply on a claim-by-claim basis." John B. Oakley, *Integrating Supplemental Jurisdiction and Diversity Jurisdiction: A Progress Report on the Work of the American Law Institute*, 74 Ind. L.J. 25, 41-42 (1998); *see also* Freer, 53 Emory L.J. at 82-83. One claim's failure to qualify for original jurisdiction does not mean that all claims fail to qualify for original jurisdiction. Whether the case is filed in federal court or removed to federal court, "it is incontrovertible that [§ 1332] . . . requires only the dismissal of the jurisdictionally insufficient claims, not the entire action." Oakley, 74 Ind. L.J. at 47; Freer, 53 Emory L.J. at 82-83; *see also Clark*, 306 U.S. at 590 (maintaining jurisdiction over one claim that met the amount-in-controversy and dismissing the claims that failed to meet the amount-in-controversy). Thus, the fact that a case contains claims that destroy diversity does not prevent the court from maintaining jurisdiction over the claims that qualify for "original jurisdiction." *See* Oakley, 74 Ind. L.J. at 47; *Clark*, 306 U.S. at 590; *see also* Fed. R. Civ. P. 21; *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 834-35 (1989) (holding that courts of appeals have the authority to dismiss a dispensable non-diverse party).

The very language of § 1367 incorporates this concept. Section 1367(a) states that a court shall have supplemental jurisdiction over all other claims that are "so related to claims in the action." The "other claims" join the related claims (those qualifying for original jurisdiction) as part of the civil action.

In this case, Beatriz's claims qualified for "original jurisdiction." On remand, it will be undisputed that Beatriz's claims constitute "a civil action of which the district courts have original jurisdiction." *See* 28 U.S.C. § 1367. Once the majority opinion concluded that the district court had "original jurisdiction" over the "civil action" consisting of

Beatriz's claims, it should have turned to § 1367's statement that "in any civil action of which the district courts have original jurisdiction [(Beatriz's claims)], the district courts shall have supplemental jurisdiction over all other [related] claims [(Beatriz's family's claims)]." *Id.* Instead of taking this step, the majority opinion attempts to redefine the practice of interpreting § 1332 claims to achieve a result contrary to that dictated by § 1367.[27]

Further, the majority's interpretation of § 1367(a) violates "[t]he cardinal principle of statutory construction . . . to give effect, if possible, to every clause and word of a statute, . . . rather than to emasculate an entire section." *United States v. Menasche*, 348 U.S. 528, 538 (1955) (internal quotations and citations omitted). The majority's interpretation of § 1367(a) eviscerates portions of § 1367(b). As the majority is forced to admit, its interpretation of § 1367 makes the Rule 19 exception in § 1367(b) "unnecessary." What the majority does not admit is that its interpretation makes other provisions of § 1367 superfluous. *See* Freer, 53 Emory L.J. at 81. For example, according to the majority's interpretation of § 1367, "original jurisdiction" would not

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[27] The majority attempts to justify its approach by arguing that Congress should have explicitly stated that supplemental jurisdiction exists if one claim supports original jurisdiction. First, such specificity is not required as it is undisputed that one claim can constitute a civil action.

Second, we can argue "could have" or "should have" ad infinitum. If Congress had wanted to limit supplemental jurisdiction in cases such as this, for example, it could have inserted a Rule 20 plaintiff exception into § 1367(b), as it did for other Rules of Civil Procedure. If Congress had done so, the majority would not need to resort to its dubious "sympathetic textualist" interpretation of the statute.

In a case like this, a debate over what Congress could have done is unproductive and unnecessary when a plain reading of the statute produces one clear result: a district court has jurisdiction over supplemental claims if the district court has original jurisdiction over a claim in the civil action.

exist over a claim made by a plaintiff against a non-diverse defendant joined under Rule 20 of the Federal Rules of Civil Procedure. The majority's interpretation cannot be correct, however, because section 1367(b) specifically excepts supplemental jurisdiction over a claim made by a plaintiff against a non-diverse defendant joined under Rule 20. *See Gibson*, 261 F.3d at 936; *Rosmer*, 263 F.3d at 115. The only reason § 1367(b) would contain such an exception is if § 1367(a) provides jurisdiction for joined claims against non-diverse defendants. If, as the majority contends, " 'original jurisdiction' under subsection (a) were determined by looking at all the claims in the complaint, there would have been no jurisdiction under § 1332 (and hence no 'original jurisdiction') in the first place." *Gibson*, 261 F.3d at 936. Thus, the exclusion of supplemental jurisdiction of claims by non-diverse parties joined under Rule 20 would be surplusage.

IV. *Congressional intent & legislative history*

Recognizing that its interpretation of § 1367 results in an "imperfect" reading based on "presumptions," the majority opinion attempts to buttress its position by referring to Congressional intent and legislative history. The majority opinion begins by noting that "Congress has long maintained a policy of restricting diversity jurisdiction." Relying on "long maintained" policy is problematic for several reasons. First, Congressional action in the past sheds little light on what the 101st Congress believed when it passed § 1367. Rather than speculate on what was done in the past, it is more fruitful to look at the actions of the Congress that adopted § 1367. In 1990, the same Congress that passed § 1367 was given the *Report of the Federal Courts Study Committee* which recommended "diversity jurisdiction should be virtually eliminated." This recommendation was *rejected* by Congress. We should not achieve through judicial action what the Federal Courts Study Committee could not convince Congress to achieve. Ultimately, it is not unreasonable to believe that Congress read the plain

language of § 1367, recognized that it allowed diversity jurisdiction for supplemental plaintiffs, and voted for it.

Second, the continued validity of Congress's "long maintained policy" of restricting diversity jurisdiction is called into question by Congress's expansion of federal jurisdiction based upon minimal diversity in the Multiparty Multi-Forum Trial Jurisdiction Act in 2002. *See* 28 U.S.C. § 1369.

Third, and perhaps most convincing is the fact that a proposed amendment achieving the majority's result in this case, that would limit supplemental jurisdiction in Rule 20 & 23 cases has been circulating in Congress since 1998. Freer, 53 Emory L.J. at 58-59. This amendment has done nothing more than circulate for six years. *Id.* Congress has reasonably rejected that view.

To conclude its opinion, the majority cites to an admittedly "muddled" legislative history for support. The legislative history, however, is so sparse and contradictory that it neither supports nor undermines the majority opinion's conclusions. Section 1367 was passed by the House of Representatives with no floor discussion on any part of the statute. Freer, 53 Emory L.J. at 73. The Senate voted on § 1367 with little debate. *Id.* The bill was introduced by Senator Grassley as "noncontroversial."

What little legislative history surrounds § 1367 is internally contradictory. For example, § 1367 "was said to be part of the 'less controversial' proposals of the . . . Federal Courts Study Committee . . . [but] that Committee never drafted a statute on supplemental jurisdiction." Richard D. Freer, *Compounding Confusion and Hampering Diversity: Life after Finley and the Supplemental Jurisdiction Statute*, 40 Emory L.J. 445, 471 (1991). Further, despite the Senator's words, and excluding the controversy surrounding supplemental jurisdiction, § 1367 was highly controversial because of its treatment of Rule 19 and its adoption of a proposal that differed substantially from the Federal Court

Study Committee proposal. *See* Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 164 (1994).

Perhaps the most relevant piece of legislative history is the fact that Congress passed § 1367 in reaction to the Supreme Court's holding in *Finley*, which held that a plaintiff suing the United States in a Federal Tort Claims Act case could not join a defendant, against whom there were only state law claims, without an independent basis for federal jurisdiction. *See Finley v. United States*, 490 U.S. 545 (1989). Had *Finley* not been overturned by § 1367, a plaintiff, such as the one in *Finley*, would have been required to either (1) split the case in two and bring the federal claim in federal court and the state claims in state court, or (2) forsake one of the two claims. To prevent such a result, Congress enacted § 1367.

The majority opinion in this case achieves a result similar to that Congress was trying to avoid by overruling *Finley*. As in *Finley*, the plaintiffs in this case must either (1) pursue Beatriz's claims in federal court and her family's claims in state court, (2) dispose of her family's claims altogether, or (3) pursue all of the claims in state court. The first option leads to a waste of judicial resources and a potential for inconsistent verdicts. The second option deprives Beatriz's family of their day in court. The third option, not present in *Finley*, deprives Beatriz of a federal forum and of her right to a trial by jury, as her case would not receive a jury trial in the Commonwealth courts.[28] As Congress showed by overturning *Finley*, being faced with these options should be avoided.

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[28] The third option is also unrealistic considering judgments in the Commonwealth courts are far below those awarded in the federal courts. *See, e.g., Stewart v. Tupperware Corp.*, 356 F.3d 335 (1st Cir. 2004).

Ultimately, as the majority concedes, the legislative history is muddled and can be used to support or to contradict either position. In the end, the unclear legislative history leaves us where we started: with the text of the statute.

V. *Conclusion*

The majority proposes an interpretation of § 1367 that not one Congressman or drafter of § 1367 ever espoused, much less envisioned. In contrast, I support a plain reading of § 1367 that even the drafters admitted was the correct plain reading of the statute.[29] The majority proposes an interpretation of § 1367 that violates many rules of statutory construction. In contrast, I support a reading of the statute in which words are not required to have double meanings and each phrase has a purpose. Last, the majority's interpretation leads to a waste of judicial resources and the possibility of inconsistent verdicts. In contrast, I support a reading which preserves judicial resources.

I am comforted by and conclude with a statement by the Supreme Court in *Finley*: "Whatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress" or, in this case, by the Supreme Court. *Finley*, 490 U.S. at 556.

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[29] *See* Rowe Jr., Burbank, & Mengler, *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 961 n.91 (1991) (recognizing that the § 1367 left a "potentially gaping hole in the complete diversity requirement").

FILED: July 28, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO ORTEGA, et al.	*	
Plaintiffs	*	
v.	*	
STAR KIST FOODS, INC.; et al.	*	Civil No. 00-1475(SEC)
DEFENDANTS	*	
* * * * * * * * * * * * *	*	

OPINION AND ORDER

Before the Court is Defendant's motion for summary judgment (Docket # 56). Defendant argues that Plaintiffs have failed to establish the jurisdictional amount necessary to sustain this case in federal court. Plaintiffs have duly opposed said motion (Docket # 64), and Defendant has filed a lengthy reply to the opposition (Docket # 66). Having considered the parties arguments, the Court will **GRANT** Defendant's motion and the case will be **DISMISSED WITHOUT PREJUDICE.**

Factual Background

This is a products liability action arising out of an unfortunate event surrounding an allegedly defective can of Star Kist tuna. The main Plaintiff is a young girl (Beatriz Blanco) who allegedly cut her pinky finger on the can of tuna while having lunch at school. There is little controversy among the parties as to what actually happened afterwards. The girl was taken to the school infirmary, where she was initially assisted by the school nurse. When she arrived at the infirmary, the girl was bleeding from the wound. The

nurse tried to stop the bleeding, cleaned the wound, and called a paramedic who worked at the school. At that point, the girl was crying and appeared anxious and nervous. When the paramedic arrived, he applied a butterfly suture to the wound. The girl was bleeding for somewhere between five (5) and fifteen (15) minutes. The wound was about a quarter of an inch deep, and about three-quarters of an inch long.

The girl's mother (Maria del Rosario Ortega) was at her home when she received a telephone call from the school stating that the girl had cut herself. When she arrived she saw Beatriz on a stretcher at the school's infirmary, crying. Beatriz was already bandaged, and Mrs. Ortega was explained what had happened. She then took Beatriz to the emergency room of the Ashford Presbyterian Hospital, where it was determined that she had no sensation and could not move her finger. At that point, they were told that the finger's tendons and nerves were probably severed, and she had to be referred to a hand specialist, Dr. Segarra. The girl was then sent home for the night, and no medication was prescribed.

The next day, Dr. Segarra performed the surgery on Beatriz's hand, under general anesthesia. After the surgery Beatriz remained in recovery for a while, because she was vomiting considerably due to the anesthesia. Later that same day, Beatriz was discharged from the hospital with a cast, and was referred to a hand therapist, Linda Ford. Mrs. Ortega was with Beatriz during this whole time. Mrs. Ortega alleges that she could not sleep the night before the operation.

After the surgery, Beatriz underwent a series of successful physical therapies, leaving her finger, by her account, "normal." Beatriz suffers no discomfort when using her hand for daily activities. Beatriz's treating physician assesses she has a 3% partial impairment of her right dominant upper extremity and a 2% impairment of her whole

person. Beatriz is the only Plaintiff alleging a physical injury in this case. According to her own deposition, she is able to physically participate in all activities in which she wants to participate, and her life is now back to "normal." Beatriz never saw a psychiatrist nor a psychologist regarding her alleged emotional damages.

The medical expenses related to the surgery amounted to $4,927.07, some of which were covered by Triple S. Plaintiffs' own treating physician stated in his report that Beatriz's prognosis is guarded in view that her condition may get worse with the growth of her hands, because her finger deformity may get worse. He also stated that she may require additional reconstructive surgery to improve her deformity and the range of motion of the affected finger joint. She may also have a greater possibility of the development of degenerative joint disease at the affected finger joint. Nonetheless, Plaintiffs have stated that they do not foresee opting for any more surgical procedures. Furthermore, there are no readily calculable future medical expenses that can be reasonably expected to arise from the injury to Beatriz's finger.

Sergio Blanco is Beatriz's father. He is divorced from Mrs. Ortega, but alleges to have an excellent relationship with his daughter. He sees her once or twice a week, and on every weekend since the divorce. He was informed of the injury by phone the same day it happened. Mr. Blanco, as well as Mrs. Ortega and Patricia Blanco, Beatriz's older sister, all claim emotional damages for the pain and suffering inflicted upon them due to Beatriz's injury. However, Mrs. Ortega never sought counseling as a result of her alleged emotional suffering, and did not lose any income as a result of Beatriz's injury. Sergio Blanco's sole claim for damages arises from alleged emotional damages. However, he has never seen a doctor regarding his alleged emotional suffering. The same is true of Beatriz's older sister Patricia.

In their Amended Complaint, Plaintiffs allege damages in the following amounts: Beatriz Blanco—not less than $500,000 for physical damages and not less than $400,000 for emotional damages; Maria del Rosario Ortega—medical expenses of $4,927.07, estimated future medical expenses of $25,000, and mental anguish of $250,000; Sergio Blanco—emotional damages estimated at $175,000; and Patricia Blanco—emotional damages estimated at $150,000. However, Defendants argue that the above-described set of facts does not support a claim, for any of the Plaintiffs, which would meet the jurisdictional amount of $75,000.00.

Applicable Law and Analysis

District Courts have jurisdiction in diversity cases when the amount in controversy exceeds $75,000.00 28 U.S.C. § 1332(a). When evaluating whether this jurisdictional amount is met, the Court may not aggregate several plaintiffs' claims. *Rompe v. Yablon*, 277 F. Supp. 662 (S.D.N.Y. 1967). For a claim to survive, it must allege the $75,000.00 minimum by itself.

It is well-settled law that, unless challenged, plaintiffs good faith allegations of damages will control the determination of the amount in controversy. *See, e.g., Department of Recreation and Sports of Puerto Rico v. World Boxing Association*, 942 F.2d 84, 88 (1st Cir. 1991) *citing Gibbs v. Buck*, 307 U.S. 66, 72 (1939). However, once the defendant challenges the amount of damages alleged in the complaint, then the burden shifts to the plaintiffs to establish facts indicating that, to a legal certainty, the claims involve more than the jurisdictional minimum. *Id.* at 88; *St. Paul Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Spielman v. Genzyme Corp.*, 251 F.3d 1, 5 (1st Cir. 2001); Wright, Miller & Cooper; Federal Practice and Procedure: Jurisdiction 3d § 3702. A case "can only be dismissed . . . for a failure to [satisfy the jurisdictional amount-in-controversy require-

ment] when it appears to a legal certainty that . . . the claim is really for less than the jurisdictional amount." *Serrano v. Nicholson Nursery, Inc.*, 844 F. Supp. 73, 75 (D.P.R. 1994) (*citing St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). As such, the party seeking jurisdiction has the burden of demonstrating that it is not a legal certainty that the claim involves less than the jurisdictional amount. *Dep't. of Recreation v. World Boxing Ass'n.*, 942 F.2d 84, 88 (1st Cir. 1991). The party can satisfy this burden by furnishing affidavits or amended pleadings. *Id.*

As the First Circuit has held, the proof offered by the plaintiffs must persuade the Court that someone familiar with the applicable law could objectively find the claim worth more than the jurisdictional minimum, otherwise dismissal must follow. *Jimenez Puig v. Avis Rent-a-Car Sys.*, 574 F.2d 37, 40 (1st Cir. 1978). Once diversity jurisdiction is challenged, the party invoking the court's jurisdiction has the burden of proving facts that support the allegation of jurisdiction by a preponderance of the evidence. *Bank One, Texas, N.A. v. Montle*, 964 F.2d 48, 50 (1st Cir). And lastly, courts must "rigorously enforce the jurisdictional limits that Congress chooses to set in diversity cases." *Coventry Sewage Assoc. v. Dworkin Realty Co.*, 71 F.3d 1, 3 (1st Cir. 1995).

In this case, Defendant argues that none of the four Plaintiffs can establish that it is not a legal certainty that their claims fall below the jurisdictionally required amount of $75,000. Since this is a diversity action, Puerto Rico law will govern the amount of damages recoverable by the Plaintiffs. *See Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938); *see also Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415 (1996). Accordingly, Plaintiffs carry the burden of establishing that, to a legal certainty, Puerto Rico law will support recovery of more than $75,000 for their individual claims. Plaintiffs, however, argue that damage awards in Federal Court may not be limited by state court decisions.

While this might be true, it is also the case that similar Commonwealth court decisions are instructive as to the amount of damages that are appropriate in this case, even though they might not be controlling. As stated by Plaintiffs, "in diversity jurisdiction actions a federal court must look at state law to determine the nature and extent of the rights to be enforced." Accordingly, let us take a look at some Puerto Rico Supreme Court cases which are somewhat comparable to the case at bar.

In *Muñoz v. New York & Porto Rico Steamship Co.*, 72 D.P.R. 582, 72 P.R.R. 543 (1951), the Puerto Rico Supreme Court upheld an award of $4,000 to a plaintiff who suffered a three and a half inch long gash on her hand that resulted in the permanent impairment of the action of her thumb. This award would be equivalent to an award of $27,661.54 in 2002 dollars,[1] which falls quite short of the jurisdictional amount. Furthermore, the injury sustained by the plaintiff in *Muñoz* was considerably larger than the one in the case at bar, and was considerably more serious, since it affected the plaintiffs thumb and not her pinky.[2]

In *Ruiz Márquez v. Municipio de Toa Alta*, RE-85-332 (1985), the plaintiff was awarded $3,000, and her parents were awarded $400 each, for several fractured fingers. These awards are equivalent to $5,013.01 and $668.40 in

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[1] All the adjustments made to the awards due to inflation were calculated using the CPI Inflation Calculator at http://data.bls.gov/cgi-bin/cpicalc.pl. The CPI inflation calculator uses the average Consumer Price Index for a given calendar year. This data represents changes in prices of all goods and services purchased for consumption by urban households. This index value has been calculated every year since 1913. For the current year, the latest monthly index value is used.

[2] As Defendant points out, the importance of the thumb, when compared to the other fingers, is underlined by the fact that the presence of an opposable thumb is one of the distinguishing characteristics that separates primates from other mammalian life forms.

2002 dollars, respectively. As a result of her injuries, the plaintiff was no longer able to play basketball or guitar. Plaintiffs expert assessed her incapacity at 1% of her left hand. In the present case, the Plaintiffs' physician assessed Beatriz's incapacity at 3% of her upper left extremity. Therefore, even assuming that Beatriz's injury was three times greater than the one in *Ruiz Márquez* (which the Court doubts, given Beatriz's deposition testimony), the damages would still only be compensable at just over $15,000.00. Likewise, Beatriz's parents' injuries would be compensable, according the Puerto Rico Supreme Court, at around $2,000.00. Again, this would fall way short of the jurisdictional amount.

Another case which is comparable to the one at bar is *Lugo Irizarry, v. Clínica Perea*, RE-84-436 (1985). In that case, the plaintiff lost three fingers as a result of medical malpractice. As a result of the poor surgical and post-operative care, the plaintiff developed a condition in her left forearm and hand that led to the amputation of three of her fingers. The plaintiffs physicians assessed her disability as 33% of her entire person, as opposed to the 2% overall disability assessment in the case at bar. As a result of the amputations, the Plaintiff in *Lugo Irizarry* was no longer able to work at her job as a machine operator in a clothing factory. Nevertheless, even with such severe injuries, the Puerto Rico Supreme Court awarded amounts that would fail to satisfy the jurisdictional minimum. The Puerto Rico Supreme Court awarded the primary plaintiff the equivalent of $58,490.00 in 2002 dollars for physical damages and mental anguish. Likewise, the Court awarded the plaintiffs daughter the equivalent of $6,684.01 in 2002 dollars for mental anguish. Even in this case, where the injury was grossly more severe than the one in the case at bar, the jurisdictional amount was not met.

Plaintiff, however, cites several Puerto Rico Supreme Court cases which she claims substantiate her position. However, the Court believes that all these cases can be

distinguished from the case at bar. In fact, the first case cited by Plaintiffs is very important for the issue of emotional damages, but actually works in Defendant's favor. In *Hernández v. Fournier*, 80 D.P.R. 93, 80 P.R.R. 94 (1957), the Puerto Rico Supreme Court held that family members have a right to recover for emotional damages (mental and moral damages) in a wrongful death action. In order to recover mental and moral damages, however, a family member, with no physical injuries of his or her own, must first prove the reality of the mental and moral damages suffered. As the Court explained in *Ramos Rivera v. E.L.A.*, 90 P.R.R. 806, 809 (1964), moral damages shall be compensated only if "it is shown how those damages affected the health, welfare, and happiness of the injured . . . ." Furthermore, "[i]n order to prevent an endless number of persons from bringing an action as a result of a single tortious act which causes the death of another person, the court need merely demand that each plaintiff fully justified the reality of the damages which he claims. **Thus, as to the moral damages, it is essential to prove deep moral suffering and anguish, and a passing affliction will not give rise to an action.**" *Id.* at 103-104 (emphasis added). The Supreme Court has consistently held that in this jurisdiction moral damages, sufferings, and anguishes can be compensated only if plaintiffs show that their emotional condition **has been affected substantially**. *Duchesne Landrón v. Ruiz Arroyo*, 102 D.P.R. 699, 702 (1974); *Lameiro v. Dávila*, 103 D.P.R. 834, 842 (1978). Therefore a court should dismiss claims for damages that do not rise to the level of deep moral suffering and anguish which substantially affected the plaintiff's emotional conditions, even in cases of wrongful death. It is highly questionable whether Plaintiffs Maria del Rosario Ortega, Sergio Blanco, and Patricia Blanco Ortega, none of whom suffered any physical injuries in this case, have established "deep moral suffering" at all. But let us take a look at the other cases which Plaintiffs cite in support of their position.

In *Concepción Guzmán v. Autoridad de Fuentes Fluviales*, 92 D.P.R. 488, 92 P.R.R. 473 (1965), the plaintiff suffered mental anguish damages, without any physical injuries, as a result of an electrical wire explosion near his house. However, unlike Plaintiffs in the case at bar, the plaintiff in *Concepción Guzmán* was treated by at least two psychiatrists for the mental and emotional afflictions he suffered as a result of the electrical wire explosion. He had symptomatic manifestations of his mental pain and suffering that are in stark contrast to the lack of such symptomatology in this case. The plaintiff in *Concepción Guzmán* suffered, *inter alia*, paralysis of the left side of his body, nausea, palpitations, dizziness, torticollis, headaches, intermittent shakes, insomnia, nightmares, irritability, incontinence, and even impotence. Furthermore, some of these symptoms persisted for months. Plaintiffs in this case have alleged no similar symptoms arising from their alleged mental suffering, and have proffered no psychiatric testimony as to the damages they have suffered.

Plaintiffs also cite *Moa v. Commonwealth of Puerto Rico*, 100 P.R.R. 572 (1972). In that case the Puerto Rico Supreme Court was confronted with a claim for moral damages made by the parents of a high school student who had his index finger partially amputated as the result of an accident in school. Although *Moa* is quite similar to the case at bar since both involved an injury to a child's finger, it must be noted that the injury in *Moa* was greater, since the plaintiff in that case had his index finger partially amputated. Furthermore, the plaintiffs injury in *Moa* is distinguishable in that he harbored on-going feelings of self-consciousness about his amputated finger and his injury prevented him from participating in activities he earlier enjoyed, such as dancing. In this case, however, Beatriz has testified that she feels no lasting ill effects, that the injury has not limited her enjoyment of activities she enjoyed prior to the injury, and that she has not been made fun of by other children and has not been subject to embarrassment or humiliation.

Nevertheless, even the plaintiff in *Moa* would not have satisfied the $75,000 jurisdictional amount. The Court awarded the primary plaintiff the equivalent of $43,014.35 in 2002 dollars. On the other hand, the child's father was awarded for his pain and suffering only the equivalent of $12,904.31 in 2002 dollars. Since the injury in the case before us is even smaller than the one in *Moa*, we could not expect the other three Plaintiffs to reach the jurisdictional amount, either.

Ramos Acosta v. Caparra Dairy, 116 D.P.R. 60, 116 T.P.R. 78 (1985) involved claims for moral damages, brought by the family members of the deceased in a wrongful death action. In this case, the Court approved the following damage award payments: $50,000 to the father, $34,171.04 to the mother, $10,000 to the brother and $5,000 to the sister. These are roughly equivalent, in 2002 dollars, to $83,550.20, $57,090.99, $16,710.04, and $8,355.02, respectively. Under *Ramos Acosta*, then, only the father's claim would have met the jurisdictional minimum. But it is important to bear in mind that the father's claims arose from a wrongful death action and were still only barely over $75,000.00. Of course, we cannot reasonably imagine that the pain and suffering of losing a child is anywhere near the suffering sustained by Plaintiffs in this case due to Beatriz's injury of her pinky finger.

Lastly, Plaintiffs cite to *Infante v. Leith*, 85 P.R.R. 24 (1962). That case arose out of a dispute involving three dogs. Two larger dogs attacked the plaintiff's dog. In that occasion the Court awarded the plaintiffs a total of $1,500.00 ($8930.46 in 2002 dollars) for both nuisance and emotional damages. Even though we understand that it is far worse to suffer the trauma of having your child injured, than watching your dog being attacked, the damages awarded in *Infante* fall so far short of the jurisdictional limit that we fail to see how this case could possibly help Plaintiffs' cause.

Plaintiffs have also made reference to several federal court decisions which they understand favor their position. Once again, the Court believes that all these cases can be distinguished from the case at bar. Plaintiff first cites *Duchesne v. American Airlines Inc.*, 758 F.2d 27 (1st Cir. 1985). However, this case is inapplicable since the Court in that occasion made an analysis under the previous $10,000.00 jurisdictional minimum. Plaintiff in that case barely made it to the $10,000.00, but would not have been even close to fulfilling the current $75,000.00 requirement.

Plaintiff then cites a series of cases in which damages were awarded for pain and suffering in excess of the $75,000.00 limit. In all of these cases, however, the plaintiffs brought evidence of their emotional or neurological conditions, either as testimony of their treating psychiatrists or psychologists, or as expert reports on their ongoing mental or neurological suffering. *See Mejía Quirós v. Maxxam Property Corp.*, 108 F.3d 425 (1st Cir. 1997) (medical testimony about **continuing** headaches, mild depression, low self-esteem and post-traumatic stress); *Grajales Romero v. American Airlines, Inc.*, 194 F.3d 288 (1st Cir. 1999) (medical evidence of **continuing** neck pains, headaches, **loss of memory**, post-concussion syndrome, cervical sprain, **chronic** back pain and **loss of cognitive functions**); *Smith v. Kmart Corp.*, 177 F.3d 19 (1st Cir. 1999) (plaintiff **diagnosed** with post-traumatic stress disorder, chronic major depression difficulty sleeping mood changes and impairment of her social and occupational relationships **which required psychiatric treatment for three to five years**); *Havinga v. Crowley Towing and Transportation Co.*, 24 F.3d 1480 (1st Cir. 1994) (**expert testimony** to the effect that plaintiffs all suffered from acute post-traumatic stress disorder); *Heddinger v. Ashford Memorial Community Hospital*, 734 F.2d 81 (1st Cir. 1984) (plaintiff whose pinky finger had been amputated and who had suffered a loss of the use of her ring finger missed a significant period of work and underwent **extensive psychiatric counseling**); *LaForest v.*

Autoridad de Fuentes Fluviales, 536 F.2d 443 (1st Cir. 1976) (plaintiffs "substantially affected" by victim's **wrongful death**); *Correa v. Hospital San Francisco*, 69 F.3d 1184 (1st Cir. 1995) (plaintiffs' **expert psychiatrist** testified they suffered depression due to their **mother's death**). All of these cases can be distinguished from the case before us since the plaintiffs 1) suffered continuing neurological problems, and/or ?) presented evidence from medical experts proving their emotional disorders which resulted from the injuries. In the case at bar, none of the Plaintiffs claim to have suffered any such ongoing neurological problems, and they all failed to present any kind of medical evidence as to their emotional conditions. In fact, Plaintiffs admitted in their depositions that they did not require any type of psychiatric or psychological treatment or help.

On the other hand, Defendant cites several federal cases which the Court finds are much more comparable to the case at bar. This Court was confronted with a similar scenario in *Tirado Toro v. Builder's Square, Inc.*, 986 F. Supp. 714 (D.P.R. 1997). In that case, this Court held that an accident resulting in fourteen (14) stitches to a plaintiffs head did not support a damage award in excess of $75,000. Although the Plaintiff in *Tirado Toro* alleged damages in excess of $80,000, the Court dismissed the claim after finding that no one who was familiar with the applicable law could objectively view the claim as being worth the jurisdictional minimum. *Id.*, at 716. In finding that the case did not meet the jurisdictional amount, the Court relied heavily on the fact that there was no proof of permanent injury, obviously other than the scar, and that there was no evidence that further medical treatment would be necessary. *Id.* The Court finally stressed that there was no record of continued medical treatment for the **emotional injury suffered**, either. *Id.* In the case at bar, the plaintiffs have failed to provide proof of any medical treatment for their emotional conditions.

This Court also dismissed the complaint in *Serrano v. Nicholson Nursery, Inc.*, 844 F. Supp. 73 (D.P.R. 1994) for

failure to fulfill the jurisdictional amount requirement. The Court based its holding on the fact that there was no evidence or allegations regarding any "consultations with any medical personnel for purposes of diagnosis or treatment as a result of the suffering." *Id.* at 76. The same was true in *De Jesús v. Eastern Air Lines, Inc.*, 708 F. Supp. 470 (D.P.R. 1989), where the plaintiffs failed to bring any evidence that they had "consulted any medical personnel for purposes of diagnosis or treatment as a result of the emotional upset suffered." *Id.* at 472. Accordingly, the Court in *De Jesús* concluded that the plaintiffs had "failed to show that their emotional condition ha[d] been affected substantially." *Id.* at 473. Plaintiffs in the case before us have similarly failed to bring any evidence to prove that their emotional suffering was chronic, ongoing, or more severe than the temporary shock of having to deal with a loved one's cut on a finger.

Finally, in another comparable case *Bewley v. Sims*, 438 F. Supp. 708 (D. Md. 1977), Plaintiff claimed damages in excess of the jurisdictional minimum resulting from a fight at a Super Bowl party. Although Plaintiff suffered a broken nose and two black eyes, the Court dismissed the case for failure to establish the jurisdictional minimum, noting that the injuries would not be permanent. *See also Turner v. Wilson Line of Massachusetts*, 242 F.2d 414, 418-19 (1st Cir. 1957) (jurisdictional amount not met by a claim for compensation for seven to eight hours of headache, weakness, dizziness, nausea and vomiting). Having all these precedents in mind, let us take one last close look at the allegations and injuries suffered by each one of the individual Plaintiffs.

Beatriz Blanco Ortega

Beatriz is the only Plaintiff alleging physical injuries in this case. Beatriz's injury is a cut on her right, little pinky finger. Her injury did not initially require stitches to control the bleeding, but rather a butterfly suture. As a result of the injury, Beatriz had a relatively minor surgery to repair a

tendon in her finger, which was performed on an outpatient basis. Beatriz did suffer some nausea and vomiting during the day of the surgery, as a result of the anesthesia used, however, no such symptoms persisted after that. According to Plaintiffs' own medical report, she suffers no discomfort when using her hand for common activities, even though she has a 3% partial permanent impairment of her right dominant upper extremity and a 2% impairment of her whole person. According to her own deposition, none of Beatriz's activities have been permanently limited because of the injury. Although the Complaint alleges that Beatriz is no longer able to play volleyball, she stated in her deposition that she is able to play basketball and participates fully in her school's gym class. In fact, her deposition shows that she no longer plays volleyball because she chooses not to do so. Furthermore, she stated that her finger now feels "normal." Beatriz participated in successful physical therapy of the finger and now agrees that her life is "back to normal."

Beatriz suffers from no significant permanent injury, other than a scar on the interior portion of her finger and a slight reduction in the range of motion of her little finger, which her treating physician concluded gave her a 3% incapacity of her right arm, or a 2% incapacity of her whole person. According to that same physician, the "grip strength" on her right hand (on which the injury occurred) is greater than the "grip strength" on her uninjured left hand. By her account, her finger is "normal," her life has returned to "normal," and none of her life activities have been permanently affected. Furthermore, aside from the physician's vague and general statement to the effect that Beatriz might require further surgery in the future, Plaintiff has presented no evidence that any such future damage may in fact occur with any certainty. Such an award of future damages would, therefore, be completely conjectural and uncertain, especially considering that Plaintiffs have averred that Beatriz does not wish to opt for such further surgery.

Therefore, Plaintiff has only established that she could be compensated for the 3% incapacity mentioned above. Having considered all the above cited cases we find that it is a legal certainty that such an injury would not be compensated in any amount close to or larger than the jurisdictional minimum. In fact, the ever-popular compendium of damage awards under Puerto Rico tort law, Antonio J. Amadeo Murga, *El Valor de los Daños en la Responsabilidad Civil*, Tomo II, at 745 and 748, provides several examples of awards, from Commonwealth and federal courts, based on the total (100%) incapacity of a person's arm. The average award is equivalent to about $88,768.00 in 2002 dollars. *Id.* Based on this, Beatriz's 3% incapacity of her arm should be compensated at an average of $2,663.04 (3% of $88,768.00). In addition, Amadeo Murga provides two tables of emotional damage awards as a result of trauma to the hands or fingers. *Id.* at 780 and 791. The average award for such a trauma is equivalent to around $34,252.60. We should be aware that this average does not take into account the severity of the injury, and that, in all likelihood, Beatriz's particular injury would be compensated with an amount in the smaller side of this bell curve. This is especially true given the fact that, as discussed above, Beatriz has failed to provide any evidence of any psychological injury. But, even if we were to take these averages and add them together (the incapacity and the emotional trauma compensation averages), they would only amount to $36,915.64, which is less than half the jurisdictional minimum. As such, it is a legal certainty that Beatriz's claim does not involve more than the jurisdictional amount and must, therefore, be dismissed.

Maria del Rosario Ortega

Maria del Rosario Ortega is Beatriz's mother. She claims damages in three categories: (1) incurred medical expenses totaling $4,927.07; (2) estimated future medical expenses of $25,000; and (3) mental anguish and suffering in the amount of $250,000. With respect to the incurred medical expenses, Defendant correctly points out that some of these costs were

covered by Plaintiff's medical insurance plan with Triple S. Defendant also correctly states that the application of the Collateral Source doctrine under Puerto Rico law is done on a case-by-case basis. *Nieves Cruz v. Universidad de Puerto Rico*, res. el 31 de abril de 2000, 2000 TSPR 78. However, even assuming that the collateral source doctrine were to be applied in this case, Plaintiff's incurred medical expenses fall very short of the jurisdictional amount. In terms of future medical expenses, as discussed above, both the treating physician's report and the Plaintiffs' depositions show that any such future medical expenses are entirely speculative, and any future surgery will be entirely elective. Furthermore, in said depositions Plaintiffs stated that no further surgery was going to be pursued.

Finally, in terms of emotional damages, we should remember that Puerto Rico law supports a claim for emotional damages, only in cases where the plaintiff's emotional condition is "substantially affected." The courts have developed a number of factors to help in the determination of whether or not a plaintiff has been "substantially affected." As discussed above, the courts inquire as to whether a plaintiff has undergone a hospitalization; lost income; consulted a doctor regarding the alleged emotional suffering; or missed work as a result of the alleged suffering. In this case, the record shows that none of the Plaintiffs has sought any such psychiatric treatment, sustained any such loss of income or wages, or been "substantially affected" by the cut to Beatriz's little finger. None of the Plaintiffs was hospitalized or received any psychological treatment at all. And even if we were to assume that the pain and trauma suffered by Plaintiffs was enough to state a cause of action for emotional damages under Puerto Rico Supreme Court precedent, we must conclude, based on the case law discussed above, that the amount of damages would be far less than the $75,000.00 jurisdictional minimum. But let us say, for the sake of argument that Mrs. Ortega could theoretically be awarded as much as Beatriz, who was the

person actually injured, due to her emotional distress, then, based on Amadeo Murga's figures as discussed above, Mrs. Ortega would only be entitled to less than $40,000.00 for the emotional damages arising from her daughter's trauma to the hand or fingers. Accordingly, Mrs. Ortega's incurred medical expenses ($5,000.00) are not nearly enough, even with such an award of emotional damages (which we do not find would be reasonable anyway), to reach the jurisdictional minimum. As such, her claim must also be dismissed.

Sergio Blanco

Sergio Blanco is Beatriz's father. Mr. Blanco is divorced from Beatriz's mother. Beatriz lives with her mother. Mr. Blanco alleges $175,000 in emotional damages. Again, Mr. Blanco has never been hospitalized as a result of his daughter's injury. Like Mrs. Ortega, Mr. Blanco has never consulted anyone about his alleged emotional suffering. Although Mr. Blanco did miss some work because of the injury, the work was limited to less than half of a day. And although Mr. Blanco missed approximately half a day of work, he suffered no loss of income. Mr. Blanco's relationship with his daughter is not close in terms of time spent together. She does not usually spend nights at his house. Even though they both live in the San Juan metropolitan area, he does not pick her up from school. He did not take her to any of her doctor or therapy appointments for her injured finger. He did not go to see his daughter's volleyball games. And when he learned of his daughter's injury, he did not leave work to meet her at the hospital. In fact, when asked if Beatriz's injury has "substantially affected" him, Mr. Blanco replied that it is "[n]ot like I'm going to die, but I don't like it a bit." However, such a temporary discomfort resulting from the unfortunate injury of a loved one is not the type of deep moral suffering and anguish that will give rise to an action for emotional damages under Puerto Rico law. In any case, as discussed above with respect to Mrs. Ortega, any compensation for

such an injury would not come anywhere near the jurisdictional amount. As such, Mr. Blanco's claim must also be dismissed.

Patricia Blanco Ortega

Patricia Blanco Ortega is Beatriz's older sister. Patricia was a college student at the time of the injury to Beatriz and was not in Puerto Rico. Patricia claims emotional damages in the sum of $150,000. Like her Co-plaintiff family members, Patricia was never hospitalized as a result of her alleged emotional suffering. Nor did she ever consult anyone regarding her alleged emotional injuries. She did not miss any school as a result of the injury to he sister's little finger, and was in no other way "substantially affected" by the injury. As such, everything discussed above with respect to Mrs. Ortega and Mr. Blanco is equally applicable to Patricia's claim. Therefore, her claim must also be dismissed.

Conclusion

Although this Court is sensitive to Plaintiffs' real and heart-felt suffering due to the unfortunate incident in which Beatriz cut her finger, it cannot renounce its identity as a court of limited jurisdiction. This Court takes very seriously the emotional distress that people suffer as a result of the pain their loved ones might endure, however, it also takes very seriously its responsibility to preserve its legitimacy by respecting the limits of its jurisdiction. The Court cannot engage in a therapeutic jurisprudence which compromises its duty to protect the legitimacy of the federal courts. Plaintiffs, despair not, the Commonwealth courts await! As such, and for all the reasons discussed above, Defendant's motion for summary judgment is **GRANTED**, and this case will be **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

In San Juan, Puerto Rico, this 18th day of July, 2002.

s/S.E. Casellas
SALVADOR E. CASELLAS
United States District Judge

FILED: Oct. 25, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO
ORTEGA, et al.
Plaintiffs

Civil No. 00-1475(SEC)

v.

STAR-KIST CARIBE, INC., et al.
Defendants

ORDER

MOTION	RULING
Docket #70 **Motion for Reconsideration**	**DENIED.** The Court does not find any new arguments or evidence in Plaintiffs' motion which would make us re-consider our previous decision. As Defendants point out in their opposition, the Court did not make any factual determinations in its Opinion, but rather reached a conclusion of law to the effect that it lacked subject matter jurisdiction over this case. We will let our prior ruling stand.
Docket #71 **Supplement to Motion for Reconsideration**	**DENIED.** *See* Ruling on Motion for Reconsideration above.

Date: October 24, 2002

s/S.E. Casellas
SALVADOR E. CASELLAS
United States District Judge

RELEVANT STATUTORY PROVISIONS

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURES

PART IV - JURISDICTION AND VENUE

CHAPTER 85—DISTRICT COURTS, JURISDICTION

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between -

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title -

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

FEDERAL RULE OF CIVIL PROCEDURE

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.